

# EXHIBIT A

**UNITED STATES DISTRICT COURT FOR THE  
SOUTHERN DISTRICT OF NEW YORK**

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EMELIKE NWOSUOCHA, :  
 :  
 Plaintiff, :  
 :  
 against :  
 :

**COMPLAINT**

DONALD MCKINLEY GLOVER, II, :  
 JEFFEREY LAMAR WILLIAMS, LUDWIG :  
 EMIL TOMAS GÖRANSSON, KOBALT :  
 MUSIC PUBLISHING AMERICA, INC. d/b/a/ :  
 SONGS OF KOBALT MUSIC PUBLISHING, :  
 RCA RECORDS, SONY MUSIC :  
 ENTERTAINMENT, YOUNG STONER LIFE :  
 PUBLISHING LLC, THEORY :  
 ENTERTAINMENT LLC d/b/a 300 :  
 ENTERTAINMENT, ATLANTIC RECORDING :  
 CORPORATION, ROC NATION PUBLISHING :  
 LLC d/b/a SONGS OF ROC NATION, SONGS :  
 OF UNIVERSAL, INC., WARNER MUSIC :  
 GROUP CORP., and WARNER-TAMERLANE :  
 PUBLISHING CORP. :

**JURY TRIAL DEMANDED**

Defendants. :

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Plaintiff Emelike Nwosuocha ("Nwosuocha"), by and through his attorneys, Aidala, Bertuna & Kamins P.C., for his Complaint against defendants Donald McKinley Glover, II ("Glover"), Jefferey Lamar Williams ("Williams"), Ludwig Emil Tomas Göransson ("Göransson"), Songs of Kobalt Music Publishing ("Kobalt Music"), RCA Records ("RCA"), Sony Music Entertainment ("Sony Music"), Young Stoner Life Publishing LLC ("YSL"), Theory Entertainment LLC d/b/a 300 Entertainment ("300"), Atlantic Recording Corporation ("Atlantic"), Warner Music Group Corp. ("WMG"), Roc Nation Publishing LLC d/b/a Songs of Roc Nation ("Roc Nation"), Songs of Universal, Inc. ("Universal"), and Warner-Tamerlane Publishing Corp ("Warner-Tamerlane")

(collectively, “Defendants”), alleges, on knowledge as to his own actions, and otherwise on information and belief, as follows:

### **PRELIMINARY STATEMENT**

1. Nwosuocha brings this action seeking injunctive and monetary relief for Defendants’ infringement via direct and/or indirect copying of Nwosuocha’s copyright in Nwosuocha’s song entitled “Made in America” (the “Copyrighted Work”), which Nwosuocha registered with the U.S. Copyright Office on May 24, 2017 and owns full copyright in.

2. The crux of the claims in this action brought pursuant to the Copyright Act of 1976, as amended (the “Copyright Act”), 17 U.S.C. §§ 101 *et seq.* is that there are substantial similarities between the Copyrighted Work and the song “This is America,” which was released pseudonymously by Defendant Glover under his musical stage name, Childish Gambino. Specifically, the substantial similarities between both songs include, but are not limited to, nearly-identical unique rhythmic, lyrical, and thematic compositional and performance content contained in the chorus – or “hook” – sections that are the centerpieces of both songs.

3. Defendants are the writers, producers, performers, record labels, publishers, distributors, managers, administrators, and/or distributors of the infringing work “This is America” (the “Infringing Work”).

4. In or about early September, 2016 Nwosuocha wrote and created the Copyrighted Work. Nwosuocha subsequently displayed the Copyrighted Work to the public on September 11, 2016 by uploading it to popular streaming platform Soundcloud, where end users were allowed to listen to the song on the Soundcloud platform as a free stream. Nwosuocha later again publicly displayed the Copyrighted Work by uploading it, accompanied by a music video, to YouTube on or about November 9, 2016, where end users were allowed to listen to the song on the YouTube

platform as a free stream. A screenshot reflecting these initial two public displays of the Copyrighted Work by Nwosuocha is annexed hereto as **EXHIBIT A**.

5. Subsequent to publicly displaying the Copyrighted Work on Soundcloud and YouTube, Nwosuocha registered his full and exclusive copyright in the Copyrighted Work with the U.S. Copyright Office on May 24, 2017 in advance of the Copyrighted Work's first publication. The Copyrighted Work would be published for the first time as the lead single for his then-unpublished album entitled "Eleven: The Junior Senior Year" (the "Album"), which he also owns full copyright to. The Certificate of Copyright reflecting the foregoing registration is annexed hereto as **EXHIBIT B**. Nwosuocha is the owner of all copyrights in the Copyrighted Work.

6. Since creating the Copyrighted Work and fixing it to a tangible medium, Nwosuocha has published, distributed, advertised, licensed, performed, publicly displayed, and sold the Copyrighted Work in the United States by, among other means, uploading the Copyrighted Work to all major music streaming platforms, including YouTube, Apple Music, Spotify, Tidal, and Soundcloud, and by selling downloadable digital copies of the Copyrighted Work.

7. All of the claims asserted herein arise out of and are based on Defendants' copying, reproduction, distribution, public display, performance, sale, licensing, marketing, promotion and/or other exploitation of the Copyrighted Work without Nwosuocha's consent. Nwosuocha sues for copyright infringement under the United States Copyright Act of 1976, as amended (the "Copyright Act"), 17 U.S.C. § 101 *et seq.*

8. Nwosuocha seeks all remedies afforded to him by the Copyright Act, including preliminary and permanent injunctive relief, Nwosuocha's damages and Defendants' profits from Defendants' infringing conduct, and other monetary relief.

### **JURISDICTION AND VENUE**

9. This court has jurisdiction over this copyright infringement action pursuant to 28 U.S.C. §§ 1331 and 1338(a) because this action arises under the Copyright Act. Federal Courts have exclusive jurisdiction over such claims pursuant to 28 U.S.C. § 1331.

10. This court has personal jurisdiction over the enumerated Defendants because they have directed their infringing activities with respect to the Infringing Work to New York residents, and New York residents are able to purchase, download, and stream the Infringing Work and works that are derivative of the Infringing Work.

11. Defendants have engaged in systematic and continuous business activities, including those relating to the Infringing Works, in New York. As such, the Defendants have engaged in continuing business activities in the instant jurisdiction.

12. Defendants are, at minimum, constructively aware of their continuous and substantial commercial interactions with New York residents.

13. Defendant Glover has performed, and he and the other Defendants have authorized, organized, and promoted performances of the Infringing Work in New York.

14. The Defendants have generated touring and recording revenues from the unauthorized and unlawful exploitation of the infringing work, including receiving substantial revenue from such exploitation in New York. They have advertised the Infringing Works to New York residents.

15. The Defendants, individually and collectively, have generated substantial revenue from the exploitation of the infringing works in New York.

16. New York has a considerable interest in adjudicating disputes wherein New York residents are the target of the harm resulting from exploitation of the infringing work

17. Venue is proper in this district under 28 U.S.C. §§ 1391(b), 1391(c) and 1400(a) because Defendants maintain offices in and are subject to personal jurisdiction in this Judicial District and have committed unlawful acts of infringement in this judicial district, and because a substantial part of the events giving rise to the within claims occurred in this judicial district.

### **PARTIES**

18. Nwosuocha is an individual who resides in and is a citizen of Miami-Dade County, Florida. Nwosuocha is a musician, singer, vocalist, songwriter, and producer who disseminates and/or performs his musical works under the pseudonym/stage name “Kidd Wes.” Nwosuocha is further engaged in, among other things, conducting the business of publicly performing, distributing, selling, marketing, licensing, promoting, and/or otherwise exploiting his musical works.

19. Upon information and belief, Defendant Glover resides in Los Angeles County, California. Among other ventures, Defendant Glover is an American singer, songwriter, and rapper who releases music under the stage name Childish Gambino, and who caused the public release of the Infringing Work on May 6<sup>th</sup>, 2018, and who has since then has caused the Infringing Work to be widely published distributed, performed, licensed, displayed, marketed, promoted, reproduced, copied and/or otherwise exploited. Upon further information and belief, Defendant Glover has derived substantial revenues and/or profits from the exploitation of the Infringing Work.

20. Upon information and belief, Defendant Kobalt Music is a Delaware corporation in the business, among others, of music publishing, with a principal place of business in New York, New York. Upon further information and belief, Kobalt Music is one of the publishers of the Infringing Work, has been responsible for, among other things, coordinating publishing, administrative, and creative support services with respect to the Infringing Work. Upon further information and belief, Defendant Kobalt Music has derived substantial revenues and/or profits from the exploitation of the Infringing Work.

21. Upon information and belief, Defendant Sony Music is a major global music company that produces, manufactures, publishes, licenses, distributes, administers, markets, and/or exploits prerecorded music, among other business ventures. Upon further information and belief, Defendant Sony Music is the parent entity that owns Defendant RCA. Upon further information and belief, Defendant Sony Music has assisted in and/or directly facilitated, among other things, the publication, licensing, promotion, reproduction, sale and/or exploitation of the Infringing Work. Upon further information and belief, Defendant Sony Music conducts systematic and continuous business in this district and has derived substantial revenues and/or profits from the exploitation of the Infringing Work.

22. Upon information and belief, Defendant RCA is an unincorporated division of Sony Music that does regular business in New York and maintains an office in New York. Defendant RCA is the record label entity to which Defendant Glover is signed for the purposes of creating, producing, manufacturing, publishing, licensing, distributing, performing, displaying, marketing, promoting, and/or otherwise exploiting the music he creates, writes and/or performs under his stage name Childish Gambino, including the Infringing Work. Upon information and belief, Defendant RCA has assisted in and/or directly facilitated, among other

things, the publishing, licensing, administration, distribution, dissemination, and/or the exploitation of the Infringing Work, and has caused copies of the Infringing Work to be widely published, distributed, performed, displayed, marketed, promoted, reproduced, copied and/or otherwise exploited to the public. Upon further information and belief, Defendant RCA has derived substantial revenues and/or profits from the exploitation of the Infringing Work.

23. Upon information and belief, Defendant Williams resides in Fulton County, Georgia. Among other ventures, Defendant Williams is an American singer, songwriter, and rapper who releases music under the stage name Young Thug, who regularly does business in New York, and who is credited as a writer of the Infringing Work and who vocally performs on the Infringing Work. Defendant Williams has caused the Infringing Work to be widely published, distributed, licensed, performed, displayed, marketed, promoted, reproduced, copied and/or otherwise exploited. Upon information and belief, Defendant Williams has derived substantial revenues and/or profits from the exploitation of the Infringing Work.

24. Upon information and belief, Defendant YSL is a Georgia limited liability company whose principal and sole member is Defendant Williams, and which functions as Defendant Williams' publishing imprint. Upon further information and belief, Defendant YSL has caused the Infringing Work to be widely published, distributed, licensed, performed, displayed, marketed, promoted, reproduced, copied and/or otherwise exploited, and has derived substantial revenues and/or profits therefrom.

25. Upon information and belief, Defendant 300 is a Delaware limited liability company doing regular business in New York, and with a principal place of business in New York, New York. Upon further information and belief, Defendant 300 is the record label to which Defendant Williams is signed for the purposes of creating, producing, manufacturing,



publishing, licensing, distributing, performing, displaying, marketing, promoting, and/or otherwise exploiting the music he creates, writes and/or performs under his stage name Young Thug, including the Infringing Work, and is the record label that has acted as the distributor for music released and/or published through Defendant YSL's imprint. Upon further information and belief, Defendant 300 has assisted in and/or directly facilitated, among other things, the publishing, licensing, administration, distribution, dissemination, and/or the exploitation of the Infringing Work, and has caused copies of the Infringing Work to be widely published, distributed, performed, displayed, marketed, promoted, reproduced, copied and/or otherwise exploited to the public. Upon further information and belief, Defendant 300 has derived substantial revenues and/or profits from the exploitation of the Infringing Work.

26. Upon information and belief, Defendant Atlantic is a Delaware corporation with offices in, and doing regular business in, the State of New York. Upon further information and belief, Defendant Atlantic has acted as the distributor of all music distributed by and through Defendant 300, including the Infringing Work. Upon further information and belief, Defendant Atlantic has assisted in and/or directly facilitated, among other things, the publishing, licensing, administration, distribution, dissemination, and/or the exploitation of the Infringing Work, and has caused copies of the Infringing Work to be widely published, distributed, performed, displayed, marketed, promoted, reproduced, copied and/or otherwise exploited to the public. Upon further information and belief, Defendant Atlantic has derived substantial revenues and/or profits from the exploitation of the Infringing Work.

27. Upon information and belief, Defendant WMG is a major global music corporation organized under the laws of Delaware with its principal offices in New York, New York. Defendant Upon further information and belief, WMG is the parent company Defendant

Atlantic, and Defendant WMG has assisted in and/or directly facilitated, among other things, the publishing, licensing, administration, distribution, dissemination, and/or the exploitation of the Infringing Work, and has caused copies of the Infringing Work to be widely published, distributed, performed, displayed, marketed, promoted, reproduced, copied and/or otherwise exploited to the public. Upon further information and belief, Defendant WMG has derived substantial revenues and/or profits from the exploitation of the Infringing Work.

28. Upon information and belief, Defendant Göransson resides in Los Angeles County, California. Among other ventures, Defendant Göransson is a music producer who is credited as a writer of the Infringing Work, whose composition and performance of the instrumental track that underlies the Infringing Work is embodied within the Infringing Work, and who does regular business in New York. Upon further information and belief, Defendant Göransson has caused the Infringing Work to be widely published, distributed, licensed, performed, displayed, marketed, promoted, reproduced, copied and/or otherwise exploited. Upon information and belief, Defendant Göransson has derived substantial revenues and/or profits from the exploitation of the Infringing Work.

29. Upon information and belief, Defendant Roc Nation is a Delaware limited liability company doing regular business in New York, and with a principal place of business in New York, New York. Upon further information and belief, Defendant Roc Nation is the record label to which Defendant Göransson is signed for the purposes of creating, producing, manufacturing, publishing, licensing, distributing, performing, displaying, marketing, promoting, and/or otherwise exploiting the music he creates, writes and/or performs under his given name, including the Infringing Work. Upon further information and belief, Defendant Roc Nation has assisted in and/or directly facilitated, among other things, the publication, reproduction,

licensing, administration, distribution, dissemination, and/or the exploitation of the Infringing Work, and has caused copies of the Infringing Work to be widely published, distributed, performed, displayed, marketed, promoted, reproduced, copied and/or otherwise exploited to the public. Upon further information and belief, Defendant Roc Nation has derived substantial revenues and/or profits from the exploitation of the Infringing Work.

30. Upon information and belief, Defendant Universal is a corporation organized under the laws of the State of California registered and doing regular business in the State of New York as a foreign business corporation. Upon further information and belief, Defendant Universal has acted as the distributor of music distributed and/or published by and through Defendant Roc Nation that includes the Infringing Work. Upon further information and belief, Defendant Universal has assisted in and/or directly facilitated, among other things, the publishing, licensing, administration, distribution, dissemination, and/or the exploitation of the Infringing Work, and has caused copies of the Infringing Work to be widely published, distributed, performed, displayed, marketed, promoted, reproduced, copied and/or otherwise exploited to the public. Upon further information and belief, Defendant Universal has derived substantial revenues and/or profits from the exploitation of the Infringing Work.

31. Upon information and belief, Defendant Warner-Tamerlane is a corporation organized under the laws of the State of California registered and doing regular business in the State of New York as a foreign business corporation. Upon further information and belief, Defendant Warner-Tamerlane has acted as the publisher and/or distributor of music published and/or distributed by and through Defendant Roc Nation and Defendant Atlantic, including the Infringing Work. Upon further information and belief, Defendant Warner-Tamerlane has assisted in and/or directly facilitated, among other things, the publishing, licensing, administration,

distribution, dissemination, and/or the exploitation of the Infringing Work, and has caused copies of the Infringing Work to be widely published, distributed, performed, displayed, marketed, promoted, reproduced, copied and/or otherwise exploited to the public. Upon further information and belief, Defendant Warner-Tamerlane has derived substantial revenues and/or profits from the exploitation of the Infringing Work.

## **FACTS**

### **A. Plaintiff and his Copyrighted Work**

32. Nwosuocha wrote the Copyrighted Work, and thereafter fixed it to a tangible medium by recording his performance of the Copyrighted Work, in or about early September of 2016. Nwosuocha has since then continued to retain ownership of the full and exclusive copyright in the Copyrighted Work, and registered his full ownership of copyright in the Copyrighted work with the U.S. Copyright Office on May 24th, 2017, prior to its publication. Nwosuocha accomplished registering his full copyright ownership in the Copyrighted Work by registering on May 24th, 2017 his full copyright ownership of the entirety of his then-unpublished album entitled “Eleven: The Junior Senior Year” (the “Album”), on which the Copyrighted Work was included.

33. Subsequent to registering his full copyright to the entirety of the fully-unpublished Album on May 24th, 2017, Nwosuocha made the first publication of the Copyrighted Work as a purchasable lead single to the Album. This initial publication of the Copyrighted Work occurred on or about June 8<sup>th</sup>, 2017.

34. As a result of the foregoing, Nwosuocha owns any and all copyright rights in the Copyrighted Work.

35. The Copyrighted Work is wholly original, and Nwosuocha is the lawful exclusive owner of all rights, title, and interest, including all rights under copyright, in the Copyrighted Work.

36. Nwosuocha is the owner of valid and subsisting United States Copyright Registration No. SRu 1-301-922 for the Copyrighted Work, issued by the United States Copyright Office on May 24<sup>th</sup>, 2017. *See Ex. B.*

37. As previously set forth, Nwosuocha has published, distributed, licensed, displayed, sold, performed, promoted, marketed and/or otherwise exploited the Copyrighted Work by, among other means, uploading the Copyrighted Work to all major music streaming platforms, including YouTube, Apple Music, Spotify, Tidal, and Soundcloud, and by selling copies of the Copyrighted Work.

#### **B. Defendants' Infringing Conduct**

38. Defendants Glover, Williams, and Göransson are credited as the writers of the Infringing Work, "This is America," which publicly-accessible records filed by and/or on behalf of the Defendants affirmatively state was created in 2018.

39. The Infringing Work, which won the 2019 Grammy for Record of the year and has continuously generated massive amounts of revenue, praise, and publicity since its initial public release, is centered on a chorus, or "hook," wherein Defendant Glover recorded his vocal performance of the rapping of the chorus' lyrics while employing a distinct and unique vocal cadence, delivery, rhythm, timing, phrasing, meter and/or pattern – or a "flow," as the various elements making up a vocal performance are known and referred to in the realm of hip-hop music. The distinctive flow employed in Defendant Glover's recorded performance of the Infringing Work's chorus, which is the musical centerpiece of the Infringing Work and forms the

namesake for the Infringing Work’s song title, is unmistakably substantially similar, if not practically identical, to the distinct and unique flow that was employed by Nwosuocha in recording his vocal performance of his rapping of the hook to his Copyrighted Work.

40. In addition to the substantially similar unique “flow” employed first in the Copyrighted Work and almost two years later in the Infringing Work, the lyrical theme, content, and structure of the identically-performed choruses are also glaringly similar. In the chorus to the Copyrighted Work, as first made available by Nwosuocha on major streaming platforms for widespread public listening as early as September 11<sup>th</sup>, 2016, Nwosuocha’s lyrical refrain is:

*“Made in America  
Flex on the radio  
Made me a terrorist  
Pessimistic n\*\*\*as  
You should just cherish this”*

Similarly, in the later-released Infringing Work, as created in 2018 and released on May 6<sup>th</sup>, 2018, the hook’s central lyrical refrain, which is repeated and reincorporated throughout the song with occasional minor variances in the specific words rapped is:

*“This is America  
Guns in my area  
I got the strap  
I gotta carry ‘em”*

- or -

*“This is America  
Don’t catch you slippin’ now  
Don’t catch you slippin’ now  
Look what I’m whippin’ now”*

41. The unmissable substantial similarity of the two flows used in the songs’ respective hooks, as augmented by the two hooks’ substantially similar structure and lyrical content, is striking to an extent beyond coincidence and is accordingly audible to the average lay

person who listens to both songs. Indeed, a number of end users from the general public who have listened to the Copyrighted Work as uploaded by Nwosuocha to major streaming platforms have left comments on the Copyrighted Work explicitly noting their opinions as members of the disinterested listening general public that the Infringing Work represents a clear infringement of the Copyrighted Work. For example, on major streaming platform SoundCloud, one listener commented on Nwosuocha's posting of the Copyrighted Work for public streaming: "*Gambino ripped this shit off you G.*" Other examples, which appear in the comment section of Nwosuocha's upload of the Copyrighted Work's music video to YouTube for public streaming, include one listener commenting "*Childish gambino gotta give you creds for the flow and everything*" and another listener commenting "*anyone gonna ask Childish Gambino about this song???*" Annexed hereto as **EXHIBIT C** are screenshots containing the relevant portions of the comment sections of Kidd Wes' "Made in America," as uploaded to SoundCloud and YouTube, reflecting the foregoing examples of comments made by the listening public.

42. Beyond the fact that the striking substantial similarities between the Copyrighted Work and the Infringing Work are manifestly audible to listening lay persons of the general public, the striking substantial similarities are also qualifiable and quantifiable from a scientific perspective. Esteemed University of Miami Musicologist Dr. Brent Swanson ("Dr. Swanson") has undertaken an investigation into the similarities between the Copyrighted Work and the Infringing Work and concluded in his investigation's report as follows:

*"This report has detailed the thematic, lyrical, visual, rhythmic, and melodic similarities between the music videos 'Made in America'" by Kidd Wes, and 'This is America,' by Childish Gambino. The videos and lyrics share the themes of gun violence, and oppression of African-Americans and People of Color by police, the political establishment, conservative organizations (in particular the NRA and the GOP), White nationalism (Charleston shooting), and racist structures in the U.S. They also use of imagery related to Blackface Minstrelsy (Jim Crow, Coon, and Uncle Tom), and deride stereotypical Black culture in an ironic way to poke fun*

*at and bring attention to the aforementioned racist power structures in the U.S or Whiteness. There are distinct similarities in melodic contour, rhythmic triplet flow in each performance, and the lines ‘Made in America’ and ‘This is America’ line-up nearly perfectly in time despite being different tempos. They also both use rhythmic utterances in their performances. **It is authors’ opinion that these similarities are likely not coincidences.**”*

See Dr. Swanson’s Report annexed hereto as **EXHIBIT D** at 15. (emphasis added).

43. In arriving at the above expert conclusion, Dr. Swanson, among other things, conducted an in-depth forensic sonic analysis and comparison of the audio making up the two songs. Based on his analysis and comparison of the two songs’ audio using a number of scientific methods of audio analysis, Dr. Swanson determined that the songs’ hooks are substantially similar from a scientific qualifiable and quantifiable perspective. *See id.* at 9-15.

44. When viewed in light of the fact that the Copyrighted Work had been made continuously widely publicly accessible by Nwosuocha significantly before the Infringing Work was created and/or released, the clearly audible (and scientifically-confirmed) substantial similarity between the Copyrighted Work and the Infringing Work cannot be reasonably ascribed to mere coincidence. Indeed, as has been opined by Dr. Swanson and a number of commenting members of the disinterested listening general public, the clear substantial similarity between the works is most reasonably ascribable to Defendants’ willful unauthorized infringement of the Copyrighted Work that was widely and continuously publicly accessible, and copyrighted, well before the Infringing Work was ever released to the public.

45. Despite the foregoing unauthorized copying of the Copyrighted Work in the Infringing Work, on or about May 6<sup>th</sup>, 2018, the Infringing Work was publicly released for the first time when: (a) Defendant Glover performed it on television while hosting Saturday Night Live; and (b) simultaneously, or soon thereafter, upon information and belief, Defendants Glover, Kobalt Music, Sony Music and RCA, as administrators and/or managers of Defendant



Glover’s music, caused a music video (the “Infringing Work Music Video”) derivative of and accompanying the Infringing Work to be uploaded to his “Donald Glover” official YouTube channel for public streaming.

46. The Infringing Work and the derivative Infringing Work Music Video were an instant sensation of historical proportions. In an article published online on May 9<sup>th</sup>, 2018 Billboard reported that the Infringing Work Music Video had been viewed nearly one million times on the “Donald Glover” YouTube channel within the first hour of its public release, had amassed 12.9 million views within the first twenty-four hours of its initial release, and had reached over 50 million views at the time of reporting (just a few days after the initial release). Nerisha Penrose, “*Childish Gambino’s Record-Breaking ‘This Is America’ Video Hits 50 Million Views in Mere Days*,” Billboard, May 9, 2018, <https://www.billboard.com/articles/columns/hip-hop/8455253/childish-gambino-breaks-his-youtube-record-this-is-america-video>.

47. As of the date of the within, the Infringing Work Music Video remains uploaded to the Donald Glover YouTube channel for public streaming and has a total view count of approximately 772.4 million views since its upload on May 6<sup>th</sup>, 2018.

48. Beyond the unprecedented astronomical number of streams that the Infringing Work and the Infringing Work Music Video garnered instantly after Defendants Glover, Kobalt Music Sony Music, and RCA first publicly released both, the Infringing Work quickly began receiving widespread critical acclaim that often specifically referenced and praised the infringing flow, structure, and/or lyrical content and themes of the Infringing Work’s hook. For example, in a glowing song review of the Infringing Work published on May 7<sup>th</sup>, 2018 by Pitchfork (one of the best-known and most influential music review outlets in the world), contributor Stephen Kearse noted of the sonics of Defendant Glover’s vocal performance in the Infringing Work that:

*“‘This Is America,’ then, is a bit of a reset. Here, [Glover] uses the ambivalent reception of black art to represent the tightrope of being black. Built on the sharp contrast between jolly, syncretic melodies and **menacing trap cadences**, the song presents Childish Gambino as confident and cutting. ‘This is America!’ **he chants** as the song swings between harmony and discord ... **Glover’s voice** bridges the two worlds, dropping to an austere deadpan for his rapping and ascending to a syrupy coo for his singing. ‘Don’t catch you slippin’ up,’ Glover warns as he pulls off the balancing act with ease ...”*

Stephen Kearse, “*Childish Gambino - This is America*,” Pitchfork, May 7, 2019, <https://pitchfork.com/reviews/tracks/childish-gambino-this-is-america/> (emphasis added).

49. Similarly, writing for Vulture (one of the world’s foremost entertainment news outlets), and echoing Dr. Swanson’s descriptions of certain unique lyrical/thematic/vocal elements from the Copyrighted Work that he found were strikingly substantially copied in the Infringing Work, Frank Guan specifically commented on the lyrics, thematic elements, and vocal performances embodied in the Infringing Work:

*“... **with its cash-grabbing, fashion-mongering, gun-waving, drug-slinging rhetoric delivered in a clipped triplet flow**, the song is a trap number in all but name. The incongruousness of Glover, raised middle-class and a NYU graduate, bragging about his Mexican drug supplier and threatening to have you gunned down, is intentional: it’s a tribute to the cultural dominance of trap music **and a reflection on the ludicrous social logic** that made the environment from which trap emerges, **the logic where money makes the man, and every black man is a criminal.**”*

Frank Guan, “*What It Means When Childish Gambino Says ‘This Is America,’*” Vulture, May 8, 2018, <https://www.vulture.com/2018/05/what-it-means-when-childish-gambino-says-this-is-america.html> (emphasis added).

50. The Infringing Work reportedly debuted at number one in the Billboard Hot 100 chart after selling 78,000 downloadable copies and garnering 65.3 million U.S. streams within its first week of release, remained number one on the Billboard Hot 100 for two weeks, and remained in the top ten of the Billboard Hot 100 for a total of five weeks.

51. The immediate sensation of the Infringing Work and the derivative Infringing Work Music Video spanned well beyond the United States in scope and extent. As reported by Billboard in an article published on August 2<sup>nd</sup>, 2018, many derivative works, or “remixes,” of the Infringing Work and/or the Infringing Work Music Video began to be disseminated on a global scale by musicians hailing from countries all over the world in the few months following the initial public release of the Infringing Work and the Infringing Work Music Video. See **EXHIBIT E** annexed hereto, Gil Kaufman, “*This Is Earth: Watch 12 Global Remixes of Childish Gambino's 'This Is America'*,” Billboard, Aug. 2, 2018, <https://www.billboard.com/articles/columns/hip-hop/8468356/this-is-america-global-remixes-childish-gambinos-india-brazil-iraq-india>.

52. In keeping with the prevailing musical custom for “remixes” within the hip-hop music genre (to which both the Copyrighted Work and the Infringing Work belong), the vast majority of these international derivative works remixing the Infringing Work have substantially featured identical copies of the compositional and performance elements embodied in the Infringing Work - including those the Defendants copied from the Copyrighted Work without authorization - except that in many instances the specific words in the Infringing Work’s lyrics were swapped out in the remixes for the international remixers own chosen words.

53. Indeed, in a number of the more well-known examples of these international derivative remix works, the international remixers/rappers who created and disseminated their own remixes of the Infringing Work rapped over substantially the exact backing instrumental (or “beat,” in hip-hop parlance) of the Infringing Work, and did so deliberately employing the same distinct and unique cadences, delivery (or deliveries), and/or phrasing(s) of the vocal performance(s) embodied in the original recording of the Infringing Work, including those

distinct and important vocal elements copied without authorization from the Copyrighted Work. The central musical idea underlying these examples of the international derivative remixes was to substantially sonically remake the Infringing Work but to do so rapping lyrics specifically referencing the remixer's own home country instead of America. Each of any such derivative remix of the Infringing Works has thus been, by design, patently referential to and promotional of the Infringing Work, and has also necessarily constituted a widespread international public distribution and/or exploitation of the Infringing Work.

54. For all intents and purposes, the phenomena of these international derivative remixes, including the attendant major media outlet coverage, has functioned as a massively effective low-budget global advertisement campaign for the Infringing Work and Defendants' various lucrative infringing endeavors with respect to the Infringing Work.

55. In addition to globally promoting, advertising, and/or otherwise facilitating the Defendants' continuing infringement of the Copyrighted Work, because many of the international derivative remixes, by design, used the same vocal elements wrongfully and unlawfully copied by Defendants from the Copyrighted Work, those international derivative remixes themselves represent infringements of the Copyrighted Work.

56. Some examples of the infringing international derivative remixes described in the foregoing have garnered significant streams and international fame in their own rights. For instance, Nigerian rapper Falz's infringing derivative remix "This is Nigeria" has been streamed on YouTube approximately 20.1 million times to date, and has been reported on by NPR and CNN, amongst other preeminent global news outlets. In another example, Dubai-based Iraqi rapper I-NZ's infringing derivative remix "THIS IS IRAQ" has been streamed on YouTube approximately 7.9 million times to date, has been reported to have amassed 350 million streams

overall, and has been the subject of reports by Newsweek, amongst other notable major media outlets. As further evidence highlighting the direct benefits Defendants have enjoyed as a direct result of these infringing derivative remixes of their Infringing Work, on the popular major online music streaming/purchase platform BandCamp, “THIS IS IRAQ” is made available by the rapper I-NZ for free streaming and for digital download with an express acknowledgement and disclaimer from I-NZ that “All rights to the musical composition belong to Childish Gambino and the record label GlassNote Records,” and additionally includes the name Childish Gambino in the posting’s tagline. A screenshot of “THIS IS IRAQ,” as uploaded to BandCamp by I-NZ, reflecting the foregoing is annexed hereto as **EXHIBIT F**.

57. Upon information and belief, none of the Defendants have caused any of the more popular/widely-consumed examples of the international derivative remixes to be removed from YouTube. Upon further information and belief, all of the Defendants have possessed the presumptive ability to cause the aforesaid international derivative remixes to be taken down from YouTube, pursuant to YouTube’s DMCA copyright takedown policy, because the Defendants are all either: (a) parties with registered writing and/or publishing interests in and to the Infringing Work; and/or (b) are major parent record corporations, distribution companies, and/or publishing companies who are responsible for the administration and/or management of the Infringing Work and the registered writing and/or publishing interest therein.

58. As a further testament to the tremendous global scale on which the Infringing Work has been disseminated and exploited, to date the Infringing Work has been reportedly been Certified:

- a. three-times Platinum in the U.S. (3,000,000 Certified Units/Sales);
- b. three-times Platinum in Australia (210,000 Certified Units/Sales);

- c. three-times Platinum in Canada (240,000 Certified Units/Sales);
- d. Platinum in Poland (20,000 Certified Units/Sales);
- e. Gold in France (100,000 Certified Units/Sales);
- f. Gold in New Zealand (15,000 Certified Units/Sales); and
- g. Gold in the United Kingdom (40,000 Certified Units/Sales).

59. In addition to garnering massive numbers of streams and/or sales, as well as spawning a swath of infringing derivative international works that furthered the Infringing Work's dissemination and themselves generated significant streams and/or sales, upon information and belief, the Infringing Work has also been exploited by the Defendants via other means, such as via live performance and via audiovisual synchronization licensing.

60. For example, in a notable instance of audiovisual synchronization licensing of the Infringing Work, the Infringing Work, including its infringing hook, can be heard prominently featured as a musical score appearing in the 2019 film "Guava Island," which was/is distributed by Amazon Prime Video, stars Defendant Glover alongside global pop phenom Rihanna, has been the subject of much widespread publicity and promotion, and remains widely streamable by the public via Amazon Prime's streaming service. Upon information and belief, since the date of its public release in the U.S., "Guava Island" has also been accessible for public streaming in numerous foreign countries including Brazil, Germany, Singapore, France, and Canada, among others. Upon further information and belief, as parties who possess and/or control and/or administrate the registered writing and publishing interests in the Infringing Work, all of the Defendants have reaped significant revenues and profits derived from this international synchronization license.

61. Though the exact extent to which Defendants Glover, Williams, and/or Göransson have individually and/or jointly publicly participated in live performances of the Infringing Work may not be fully ascertainable by Nwosuocha until discovery in this action is complete, it is presently known that, in 2018 through 2019, Defendant Glover went on the international “This is America Tour.” During the tour, which was named/branded after the Infringing Work, upon information and belief as well as publicly-available setlists/recordings, Defendant Glover gave live performances of the Infringing Work approximately thirty to thirty-five separate times at concerts dates spanning the United States and various locations in Canada, Australia, England, and France.

62. It is not yet known to Nwosuocha precisely how many total concert tickets were sold during the entire span of the This is America Tour, or precisely how much gross revenue was generated from the total sales from the entire span of the tour. Nonetheless, publicly-available concert box office data reported by Billboard, which **does not include** sales/revenue data for the majority of the venues where Defendant Glover performed during the tour, makes presently knowable that the This is America Tour garnered approximately 190,707 total concert ticket sales, resulting in a total gross revenue of \$16,286,160.00, from the tour performances that occurred in just twelve out of the thirty total venues that hosted the tour. Because the foregoing astronomical \$16,286,160.00 gross revenue figure represents roughly just 40% (12 out of 30 tour venues) of the entire tour, it is reasonable to assume that the tour’s total gross revenue, derived in significant part from Defendants’ infringing use of the Copyrighted Work in the Infringing Work, far exceeds this figure. Upon further information and belief, as the parties who possess and/or control and/or administrate the writing and publishing interests in the Infringing Work, all of the Defendants have reaped significant revenues and profits derived from the tour.

63. Upon information and belief, the Infringing Work was also merchandised in tour merchandise sold during the tour, and Defendants have derived revenue from this merchandising.

64. Upon information and belief, the Infringing Work has also been performed live outside the context of the This is America Tour, including, but not necessarily limited to, at the 2018 BET Awards.

65. Upon information and belief, Defendants Kobalt Music, RCA, Sony Music, YSL, 300, Atlantic, WMG, Roc Nation, Universal, and Warner-Tamerlane (collectively, the “Label Defendants”) have individually and jointly been responsible for the continuing administration, display, reproduction, distribution, performance, sale, marketing, promotion, and/or other exploitation of the Infringing Work. Upon further information and belief, the Label Defendants’ joint and individual infringing conduct in this regard extends to conduct that continues to infringe upon Nwosuocha’s full ownership of the copyright to the Copyrighted Material, including, but not limited to, the various examples infringing conduct described above. For instance, as just one example of Defendant RCA’s, and its parent company Defendant Sony Music’s, role in carrying out and furthering the continuing infringement of Nwosuocha’s Copyrighted Work is a press release dated May 6<sup>th</sup>, 2018 posted publicly to Defendant RCA’s official website, wherein Defendant RCA: directly promotes both the Infringing Work and the derivative Infringing Work Music Video; explicitly solicits public streaming of both the Infringing Work and the derivative Infringing Work Music Video; and explicitly solicits the public to *purchase* copies of the Infringing Work. *See* the May 6<sup>th</sup>, 2018 RCA online press release annexed hereto as **EXHIBIT G**. In other examples, which are but two of numerous examples where Defendant Roc Nation’s overtly has furthered the continuing infringement, Roc Nation’s website directs visitors specifically to stream the “Guava Island” film prominently



containing the Infringing Work and features a “news” update of the Infringing Work’s Grammy award. Indeed, upon information and belief, all of the Label Defendants, personally and/or through their subsidiaries, have overtly promoted and marketed multiple instances of the continuing infringing use of the Copyrighted Material by way of its unauthorized inclusion in the Infringing Work.

66. Upon further information and belief, the Label Defendants are individually and jointly responsible for the administration and/or distribution of the various streams of revenue derived from conduct that continues to infringe upon Nwosuocha’s full ownership of the copyright to the Copyrighted Material, including, but not limited to, the various examples of infringing conduct described above.

67. Upon information and belief, Defendants Glover, Williams, and Göransson, as the three parties credited with writing the Infringing Work, have continuously derived significant financial and professional benefits directly resulting from conduct that continues to infringe upon Nwosuocha’s full ownership of the copyright to the Copyrighted Material, including, but not limited to, the various examples of infringing conduct described above.

68. Further, Defendants Williams and Göransson both took affirmative public steps to advance their financial interests as credited writers of the Infringing Work by promoting, encouraging, and/or soliciting the widespread global dissemination of the Infringing Work. Illustrative examples of such conduct by Defendants Williams and Göransson include, but are not limited to, Defendant Williams doing a promotional video piece for major streaming platform Spotify publicly released on or about May 8<sup>th</sup>, 2018 that solicited end users to stream the Infringing Work on Spotify, and Defendant Göransson championing the Infringing Work as a song that “speaks to people; it connects right to your soul. It calls out injustice, celebrates life

and reunites us all at the same time" directly to the countless viewers of his highly-televised acceptance speech for the Grammy given to the Infringing Work.

69. Upon information and belief, as a direct result of the streaming, licensing, sale, derivative streaming/licensing/sale/exploitation, synchronization licensing, live performance, reproduction, marketing, promotion, and/or other exploitation of the Infringing Work, all Defendants have wrongfully benefited, and continue to wrongfully benefit, from their continued wrongful uses of Infringing Work and/or the derivative Infringing Work Music Video that both include material to which Nwosuocha owns full copyrights. Because the foregoing sets forth only that portion of Defendants' infringing conduct that has been reasonably discoverable and ascertainable to Nwosuocha in the time since the Defendants' infringing conduct first became public on May 6<sup>th</sup>, 2018, the foregoing likely may only represent a portion of the totality of the infringing conduct for which Defendants are liable to Nwosuocha either on individual and/or joint bases.

70. On December 7<sup>th</sup>, 2020 Nwosuocha's undersigned counsel sent a letter to Defendants Glover, Williams, Göransson, Sony, and RCA in order to put the Defendants on formal notice of Nwosuocha's objection to the Defendants' unauthorized and infringing reproduction, publication, promotion, distribution, license, public display, sale and/or exploitation of the Copyrighted Work. The letter also, in good-faith, sought to provide the Defendants an opportunity to discuss a pre-suit resolution to the issue of their continuing infringement that may have avoided the need for Nwosuocha's within resort to the courts. Annexed hereto as **EXHIBIT H** is a true and correct copy of Nwosuocha's counsel's December 7<sup>th</sup>, 2020 letter to Defendants.

71. Nwosuocha's counsel received no response to the December 7<sup>th</sup>, 2020 letter from any of the Defendants except Defendant Glover, whose counsel, Jonathan D. Davis, Esq. ("Mr. Davis"), reached out to the undersigned to ask for materials supporting Nwosuocha's copyright claims, such as Dr. Swanson's report, for Defendant Glover's review. On February 16<sup>th</sup>, 2021, given that Defendant Glover had opened the lines of communication but still had failed to demonstrate an intent to cure, or even temporarily mitigate, the continuing global infringement of Nwosuocha's Copyrighted Work, the undersigned sent Mr. Davis a cease and desist letter demanding that Defendant Glover immediately cease all of his infringing conduct with respect to the Copyrighted Work, destroy all infringing materials in his possession, custody, and control, and provide Nwosuocha with a full accounting of all proceeds he derived from the Infringing Work. Annexed hereto as **EXHIBIT I** is a true and correct copy of Nwosuocha's counsel's February 16<sup>th</sup>, 2021 cease and desist letter. In good-faith, and hoping to convince Defendant Glover to begin abating the continuing infringement of the Copyrighted Work as soon as possible, Nwosuocha also soon thereafter provided Mr. Davis with the corroborative materials he requested for Glover's review.

72. Despite the foregoing two letters sent by Nwosuocha's counsel, as well as Nwosuocha's counsel's good-faith communications with and informal document disclosure to Glover's counsel, to date none of the Defendants have communicated to Nwosuocha any intention on their parts to cease, desist, and/or otherwise cure any of their continuing willful infringing conduct with respect to the Copyrighted Work. Nwosuocha is not aware of any evidence otherwise demonstrating that any of the Defendants have or will cease, desist, and/or otherwise cure their massive ongoing global infringement of the Copyrighted Work. Given that the notice provided by Nwosuocha was received by Defendants Glover, Williams, Göransson,

Sony, and RCA, the remaining co-defendants (as Defendants Glover's, Williams', and Göransson's publishers and/or record labels and/or distributors, and/or parent corporations thereof) had reasonable opportunity and cause to learn of Nwosuocha's notice from Defendants Glover, Williams, Göransson, Sony Music, and/or RCA. Accordingly, because Nwosuocha's notice clearly set forth his objection to the Defendants' continuing infringement, the Defendants' continuing infringement after that notice is evidence of the willfulness with which they continue to engage in their infringement.

73. As a result of Defendants' actions described above, Nwosuocha has been directly damaged, and is continuing to be damaged, by Defendants' willful unauthorized and infringing reproduction, publication, promotion, distribution, license, public display, sale and/or exploitation of the Copyrighted Work. Defendants have never accounted to or otherwise paid Nwosuocha for their unauthorized use of the Copyrighted Work.

**FIRST CAUSE OF ACTION**  
**(DIRECT, CONTRIBUTORY, AND VICARIOUS COPYRIGHT INFRINGEMENT**  
**AGAINST ALL DEFENDANTS)**  
**(17 U.S.C. § 101, *et seq.*)**

74. Nwosuocha repeats and re-alleges each of the foregoing paragraphs as though fully set forth herein.

75. Nwosuocha is the sole and exclusive owner of the U.S. Copyright in all rights, titles, and interests in the Copyrighted Work, "Made in America" as written and recorded by Nwosuocha.

76. The Defendants' unauthorized reproduction, distribution, public performance, display, creation of derivative works, and other exploitation and/or misappropriation of the Copyrighted Work infringes Nwosuocha's exclusive rights in violation of the Copyright Act, 17 U.S.C. § 101 *et seq.*

77. The Defendants did not seek or receive permission to copy and/or interpolate any portion of the Copyrighted Work into the Infringing Work, “This is America.”

78. The Defendants’ conduct has at all times been knowing, willful, and with complete disregard for Nwosuocha’s rights.

79. As a direct and/or proximate cause of the Defendants’ wrongful conduct, Nwosuocha has been irreparably harmed.

80. The Infringing Work copies quantitatively and qualitatively distinct, important, and recognizable portions and/or elements of the Copyrighted Work.

81. Specifically, the Infringing Work copies distinctive and important vocal elements of the composition and performance embodied in the Copyrighted Work.

82. The central inclusion of the foregoing important vocal elements from the Copyrighted Work in the Infringing Work has greatly enhanced the musical and financial value of the Infringing Work.

83. From the date of the creation of the Infringing Work, all of the Defendants have infringed Nwosuocha’s copyright interest in the Copyrighted Work including: (a) by substantially copying and publicly performing, or authorizing the copying and public performances, including publicly performing the Infringing Work at radio, live concerts, and on film, video, television, and otherwise; (b) by authorizing and/or playing a role in the facilitation of the reproduction, distribution and sale of records and digital downloads containing the Infringing Work through the execution of licenses, and/or actually selling, manufacturing, and/or distributing the Infringing Work through various sources; (c) by substantially copying and participating in the related marketing and promotion of the sale of the records, videos, tickets to concerts and other performances, and other merchandise; and (d) by participating in and

furthering the aforementioned infringing acts, and/or sharing in the proceeds therefrom, all through substantial use of elements of the Copyrighted Work in and as part of the Infringing Work, packaged in a variety of configurations and digital downloads, mixes and versions, and performed in a variety of ways including via radio, streaming services, concerts, film, video, television, and/or otherwise.

84. Nwosuocha has received no songwriter credit and no copyright ownership interests in and for any exploitations of the Infringing Work or any of the works associated with the Infringing Work.

85. The infringement by the Defendants has been, and continues to be, willful and knowing.

86. With knowledge of the infringement, the Defendants have induced, caused, or materially contributed to the infringing conduct of others, such that they should be found to be contributorily liable.

87. The Defendants had the right and ability to control other infringers and have derived a direct financial benefit from that infringement such that the Defendants should be found vicariously liable.

88. The infringement is continuing, as the Infringing Work continues to be sold, licensed, performed, displayed, merchandised, and/or otherwise used and/or exploited by the Defendants or their agents.

89. As a direct and proximate result of the conduct of the Defendants, Nwosuocha has suffered actual damages including lost profits, lost opportunities, and loss of goodwill, while Defendants have profited in the amount of hundreds of millions of dollars and to be determined at trial from their infringement.

90. Pursuant to 17 U.S.C. § 504(b), Nwosuocha is entitled to damages including the substantial profits of the Defendant, as will be proven at trial.

91. In the alternative, pursuant to 17 U.S.C. § 504(c), Nwosuocha is entitled to the maximum statutory damages of \$150,000 per infringement, since the Defendants' willful and continuing infringement occurred after Nwosuocha's full-owned copyrights in the Copyrighted Work were registered and after the Copyrighted Work had been published and made widely publicly-accessible.

92. Nwosuocha is entitled to his costs, including reasonably attorneys' fees, pursuant to 17 U.S.C. § 505.

93. Defendants' conduct is causing, and unless enjoined by this Court, will continue to cause Nwosuocha irreparable injury that cannot be fully compensated or measured in monetary terms. Nwosuocha has no adequate remedy at law. Pursuant to 17 U.S.C. § 502, Nwosuocha is entitled to a permanent injunction prohibiting the reproduction, distribution, sale, public performance, or other use or exploitation of the Infringing Work, including all derivatives thereof, in any and all formats, configurations and/or media.

### **RELIEF REQUESTED**

**WHEREFORE**, Nwosuocha respectfully requests that judgment be entered against the enumerated Defendants, as follows:

A. A declaration that Defendants have willfully infringed Nwosuocha's Copyrighted Work in violation of the Copyright Act;

B. A declaration that Defendants are directly, vicariously and/or contributorily liable for copyright infringement, as applicable;

C. A permanent injunction requiring Defendants and their agents, employees, officers, attorneys, successors, licensees, partners, and assigns, and all persons acting in concert or participation with each or any one of them, to cease directly and directly infringing, and causing, enabling, facilitating, encouraging, promoting, inducing, and/or participating in the infringement of any of Nwosuocha's rights protected by the Copyright Act;

D. An award of damages pursuant to 17 U.S. § 504(b), including actual damages, and the profits of the Defendants as will be proven at trial, including all profits and damages from exploitation of the Copyrighted Work domestically and internationally, as well as any and all profits and damages in the following categories attributable to the infringement, including but not limited to:

- (1) Record sales;
- (2) Downloads;
- (3) Ringtones;
- (4) Ringback tones;
- (5) Public performance revenues;
- (6) Digital revenue;
- (7) Streaming revenue;
- (8) Synchronization licensing;
- (9) Merchandising;
- (10) Public appearances;
- (11) Endorsements;
- (12) Sponsorships;
- (13) Spokesperson work;
- (14) Touring revenue;
- (15) Advertising revenue;
- (16) Appearance fees;
- (17) Name and likeness income and increase in value;
- (18) Rights of publicity income and increase in value;
- (19) Increased value in all Defendants' publishing and/or record company and/or companies;
- (20) Increased value of all Defendants' catalogues;
- (21) Increased value of music publishing and/or record royalties and rights;
- (22) Increased value of social media rights, accounts and value;
- (23) Increased goodwill;
- (24) Promotional value;
- (25) Increased value of royalty rate for record deals;



- (26) Increased value in distribution deals, negotiating power and reduction in costs;
- (27) Value of obtaining lower cost of administration fees and/or increased advances for publishing deals;
- (28) Value of obtaining better terms for record company advances and terms and multi-record deals;
- (29) Value of obtaining better terms of publishing and/or recorded master deals for the existing catalogue and for future works of Defendants Glover, Williams, and Göransson;
- (30) Increased value in negotiating 360 deals with record companies and/or publishers;
- (31) Sheet music sales and sheet folio income;
- (32) Any and all music publisher income;
- (33) Any and all record master income;
- (34) Any and all record income;
- (35) Any and all SoundExchange, BMI, ASCAP, PRS, SESAC, PPL, SOCAN, MCPS, Harry Fox Agency, and any and all collection society, mechanical society and performance society income worldwide;
- (36) Any and all producer royalty income;
- (37) Any and all arrangement income;
- (38) Any and all income derived from any existing medium or any medium hereinafter developed worldwide;
- (39) Any and all income from any new collection society and/or collection agency to be created anywhere in the world, including by the U.S. Congress under the Music Modernization Act;
- (40) Any and all income from any society to which any Defendant belongs or joins in the future;
- (41) Any and all income and/or residuals from SAG-AFTRA;
- (42) Any and all income from Apple, iTunes, Amazon, Spotify, Pandora, Rhapsody, and any and all download and streaming services; and
- (43) Any and all of Defendants' equity interests in Spotify, and any other music streaming or download services or companies in which one or more Defendant has an interest, as it relates to the value from the inclusion of the infringing song in the service.

E. In the alternative, an award of statutory damages, pursuant to 17 U.S. § 504(c), in the amount of \$150,000 for each act of infringement;

F. An award of compensatory and special damages in accordance with proof at trial;

G. An award of attorneys' fees and full costs pursuant to 17 U.S. § 505 and under other applicable law;

H. For pre-judgment and post-judgment interest according to law, as applicable; and

I. For such other and further relief as this Court may deem just and proper.

**REQUEST FOR TRIAL BY JURY**

Pursuant to Rule 38(b) of the Federal Rules of Civil Procedure, Nwosuocha demands a trial by jury as to all issues triable by jury, as enumerated and set forth in more detail in this Complaint.

Dated: New York, New York  
May 5, 2021

Respectfully submitted,

**AIDALA, BERTUNA & KAMINS, P.C.**

By: /s/ Imran H. Ansari  
Imran H. Ansari, Esq.  
546 Fifth Avenue, 6<sup>th</sup> Floor  
New York, NY 10036  
T: (212) 486-0011  
F: (212) 750-8297  
iansari@aidalalaw.com


*and*

**MIAMI ENTERTAINMENT LAW GROUP**

By: /s/ La'Shawn N. Thomas  
La'Shawn N. Thomas, Esq.  
261 North University Drive, Suite 500  
Plantation, Florida 33324  
T: (305) 417-6450  
F: (305) 417-6452  
LThomas@MiamiEntertainmentLawGroup.com  
*Pro Hac Vice Application Forthcoming*

*Attorneys for Plaintiff Emelike Nwosuocha*


# EXHIBIT A

SOUNDCLOUD

HomeStreamLibrary

Search for artists, bands, tracks, podcasts

Sign inCreate account


Kidd Wes

4 years ago


Kidd Wes-Made In America (prod. by Mindlabs)

#Hip-hop & Rap

VIDEO IN DESCRIPTION



0:003:39




PARENTAL ADVISORY EXPLICIT CONTENT

Write a comment

LikeRepostShareAdd to Next upMore

85.6K405170



Kidd Wes

3,51837

Follow

Report

Follow Kidd Wes and others on SoundCloud.

Create a SoundCloud accountSign in


Fuck 2016 Rappers

Official Video:

[youtu.be/C7zL\\_OE7gnM](https://youtu.be/C7zL_OE7gnM)


#KiddWes#Trump#Clinton#Drake#40#YesJulz#Trap

134 comments

LUNAR! at 0:35:


Gambino ripped this shit off you G

2 years ago

#07 Dj wakach at 1:43:


i fw the bass

3 years ago

girls away at 1:40:


loving it already

3 years ago

phelp hawk at 1:09:


i want it on itunes and spotify

3 years ago

KelseysKicksMusic at 3:10:


MADE IN AMERICA, FLEX MADE ME A TERRORIST :) REPOST!!

4 years ago

Nolan J Jackman at 3:00:


Wonderfool voice

4 years ago

mark m fleetwood at 0:11:


Great job blue flame

4 years ago

ccbutterfield1 at 0:24:

it!!!! Masterpiece!


4 years ago

User 151735024 at 3:00:


uper bra lâtt? Keep up the god work !

4 years ago


Related tracks

Cease MothaFucker

9,0889723


VK Rz Gramtalk freestyle

1,407702411


pedknows Tastyer - Pedknows

3,6703186


In playlists

DigitalTraphouse Best of the Week Vol. 10


21

DigitalTraphouse Best of the Month Vol. 3 - Sep

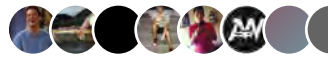
311

Jules Marchisio trap us

405 likes



170 reposts



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



















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<https://soundcloud.com/kiddwesischurch/made-in-america-prod-by>


Page 1 of 3

- randychetsingh1960 at 0:09:  
Blue the music is banging as always
- c g mcdavid68 at 0:51:  
Is great song for my.
- neiljeremyhudson17 at 2:38:  
Love it blue
- D G Linney at 2:36:  
Soo much talent...~~!!~
- edforelli at 3:37:  
this song is amazing , i like
- Blair T x Panasik at 1:33:  
I look froward! I love this song!
- ydimirybe at 3:15:  
Great song and awesome smile emoticon
- philiphypaoli1988 at 3:03:  
Amazing, it really is
- yqomibonu58 at 2:14:  
sneakers on point
- pat s a cooper at 2:58:  
So excited for you! Good luck!
- eqokabyvugi at 0:15:  
uper bra lâť?? Keep up the god work !
- CPBrooks at 3:21:  
I love this song \*\*\*
- trentnobriggs6 at 2:50:  
it!!!! Masterpiece!
- arebylukiwi at 1:52:  
A great song! Wish you all
- F z Gossett3 at 1:03:  
very nice!!!Love it!
- IJGormley3 at 1:55:  
Great song and awesome smile emoticon
- joshlcrook at 2:13:  
My ambition was always my favorite
- ocimakiwew56 at 3:22:  
It's fantastic!! ;D <333
- uhabezuraty at 2:03:  
one word AMAZING
- J L Forrester75 at 0:41:  
good luck guys you deserve it~@#
- c d webber7 at 0:28:  
Great job blue flame
- SIWregget at 0:33:  
I love this song
- Silas D D Emmery at 2:25:  
Wonderfool voice

Imprint - Creator Resources - Blog - Chart:  
Popular searches  
[Language](#): English (US)

-  punutuw92 at 0:09:  
Loved the song was good4 years ago
-  rossenadeau4 at 2:47:  
perfect song. one of my favourites4 years ago
-  jacob fritshaw92 at 3:37:  
Beautiful song well song4 years ago
-  ragubuxefi at 3:00:  
So excited for you! Good luck!4 years ago
-  austinbescobedo1983 at 1:41:  
Again and again I Loved it4 years ago
-  ywimepicyw1964 at 3:29:  
My one and only voice...Love this voice4 years ago
-  Jasmine at 2:33:  
bad ass rap <34 years ago
-  Sheila at 1:50:  
Lyrical GENIUS4 years ago





0:00

3:39

 Kidd Wes  
Kidd Wes-Made In America (prod. b...



Kidd Wes-Made In America [Official Music Video] (Shot by Gfxkid Films)

122,560 views • Nov 9, 2016

1K 119 SHARE SAVE ...



Kidd Wes  
379 subscribers

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PRINCE RILEY RFMG  
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Kidd Wes  
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03. Memoirs of a Gold Chain (prod. by Mikey Beatz)  
Kidd Wes  
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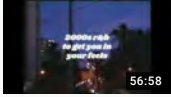
Kidd Wes- Made in America [Behind the Scenes]  
Kidd Wes  
17K views • 4 years ago



murray - quicksand (official music video)  
Murray  
65M views • 6 months ago



E-40 "I STAND ON THAT" FT. JOYNER LUCAS & T.I. (MUSIC...  
E40TV  
7.6M views • 1 month ago



2000s r&b playlist to get you in your feels reupload  
Ahmad-Xv  
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RUN DMC - Walk This Way (Official HD Video) ft. Aerosmith  
Run DMC  
90M views • 11 years ago



04L Jigg - SHOOTA SHOOTA  
04L Jigg  
1K views • 4 years ago



JokaaG - Heart (Official Music Video) Shot By @HoldUpTV  
HoldUpTV  
73K views • 2 years ago

NLE Choppa - Final Warning (Official Video)  
NLE CHOPPA  
6.7M views • 4 days ago  
New

Polo G - RAPSTAR (Official Video)  
Polo G  
49M views • 3 weeks ago

Eminem - Godzilla ft. Juice WRLD (Directed by Cole...  
Lyrical Lemonade  
363M views • 1 year ago

Pooh Shiesty - Back In Blood (feat. Lil Durk) [Official Music...  
Pooh Shiesty  
130M views • 4 months ago

21 Savage - a lot (Official Video) ft. J. Cole  
21 Savage  
365M views • 2 years ago

Yung Bleu - You're Mines Still (feat. Drake) [Official Video]  
Yung Bleu  
108M views • 4 months ago

Mac Miller - Self Care (Official Music Video)  
Mac Miller  
281M views • 2 years ago

06. In Between the Lines Ft. Ca\$he & DJ Fly Guy (prod. by...  
Kidd Wes  
35 views • 6 years ago

Bblasian - Change (Official Video)  
Lil Zayo  
690K views • 3 years ago

Childish Gambino - Feels Like Summer  
Donald Glover  
222M views • 2 years ago

# EXHIBIT B



# Certificate of Registration



This Certificate issued under the seal of the Copyright Office in accordance with title 17, *United States Code*, attests that registration has been made for the work identified below. The information on this certificate has been made a part of the Copyright Office records.

*Shiria Perlmuter*

United States Register of Copyrights and Director

**Registration Number**

**SRu 1-301-922**

**Effective Date of Registration:**

May 24, 2017

## Title

**Title of Work:** Eleven: The Junior Senior Year

## Completion/Publication

**Year of Completion:** 2017

## Author

- Author:** Emelike Wesley Nwosuocha
- Pseudonym:** Kidd Wes
- Author Created:** sound recording
- Citizen of:** United States
- Domiciled in:** United States
- Year Born:** 1987
- Pseudonymous:** Yes

## Copyright Claimant

**Copyright Claimant:** Emelike Wesley Nwosuocha  
2237 NE 42nd Ave, Homestead, FL, 33033, United States

## Rights and Permissions

**Name:** Emelike Wesley Nwosuocha  
**Email:** kiddwes@gmail.com  
**Telephone:** (786)531-4022  
**Alt. Telephone:** (786)525-8939  
**Address:** 2237 NE 42nd Ave  
Homestead, FL 33033 United States

## Certification

**Registration #:** SRu001301922  
**Service Request #:** 1-5219288781

Emelike Wesley Nwosuocha  
2237 NE 42nd Ave  
Homestead, FL 33033 United States



Type of Work: Sound Recording

Registration Number / Date: SRu001301922 / 2017-05-24

Application Title: Eleven: The Junior Senior Year.

Title: Eleven: The Junior Senior Year.

Description: Electronic file (eService)

Copyright Claimant: Emelike Wesley Nwosuocha, 1987- .

Date of Creation: 2017

Authorship on Application: Kidd Wes, pseud. of Emelike Wesley Nwosuocha, 1987-  
(author of pseudonymous work); Domicile: United States;  
Citizenship: United States. Authorship: sound recording.

Rights and Permissions: Emelike Wesley Nwosuocha, 2237 NE 42nd Ave, Homestead, FL,  
33033, United States, (786) 531-4022, (786) 525-8939,  
kiddwes@gmail.com

Copyright Note: Basis for Registration: Unpublished collection

Names: Nwosuocha, Emelike Wesley, 1987-  
Wes, Kidd, pseud., 1987-

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# EXHIBIT C



YouTube

kidd wes made in america

n

nusrat fast · 4 years ago

Youngworld

REPLY

94tengu · 2 years ago

niceee—

REPLY

▼

View reply from Kidd Wes

Mr. Ismail · 4 years ago

This is on sum revolutionary shit

REPLY

J

Jonathan · 2 years ago

anyone gonna ask Childish Gambino about this song???

2

REPLY

▼

View reply

md

md hadi · 4 years ago

oooooooooooooooooooooooooooo

REPLY

Hectvr · 4 years ago

That's my UNCLE!!

REPLY

Episode 14 | Widescreen | Mr...  
Mr Bean  
39M views · 2 years ago  
26:36

Animation Life: FULL MOVIE (Minecraft Animation)  
Black Plasma Studios  
135M views · 2 years ago  
53:13

The Weeknd - Blinding Lights (Official Audio)  
The Weeknd  
508M views · 1 year ago  
3:24

FredRarrii Feat. CP3 & Lil Ted - Money On My Head (Official...  
FredRarrii  
350K views · 3 years ago  
4:28

lofi hip hop radio - beats to sleep/chill to  
Lofi Girl  
8.6K watching  
**LIVE NOW**

NARUTOVIBES  
AnimeVibe  
9.4M views · 4 months ago  
58:37

DHARIA - Sugar & Brownies (by Monoir) [Official Video]  
Thrace Music



Kidd Wes

4 years ago

# Kidd Wes-Made In America (prod. by Mindlabs) VIDEO IN DESCRIPTION

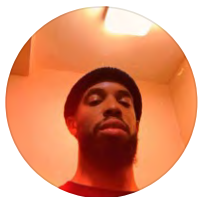
# Hip-hop &amp; Rap



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85.6K 405 170



Kidd Wes

3,517 37

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Report

Fuck 2016 Rappers

Official Video:

[youtu.be/C7zL\\_OE7gnM](https://youtu.be/C7zL_OE7gnM)

# Kidd Wes # Trump # Clinton # Drake # 40  
# YesJulz # Trap

134 comments

- LUNAR! at 0:35: Gambino ripped this shit off you G 2 years ago
- Dj wakach at 1:43: i fw the bass 3 years ago
- girls away at 1:40: loving it already 3 years ago
- phelp hawk at 1:09: i want it on itunes and spotify 3 years ago
- KelseysKicksMusic at 3:10: MADE IN AMERICA, FLEX MADE ME A TERRORIST :) REPOST!! 4 years ago
- Nolan J Jackman at 3:00: Wonderfool voice 4 years ago
- mark m fleetwood at 0:11: Great job blue flame 4 years ago

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SSG (Trilla & Southside Matt) - No ...  
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Gramtalk freestyle  
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F\*\*\*\*D UP  
5,421 17 41

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Best of the Month Vol. 3 - Septemb...  
3 1
- Jules Marchisio  
trap us

405 likes

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0:36

3:39



Kidd Wes  
Kidd Wes-Made In America (pro...



# EXHIBIT D



# **The Similarities Between Kidd Wes’s “Made in America” and Childish Gambino’s “This is America.”**

Dr. Brent Swanson (Lead Investigator)

Marcus Grant (Associate)

## **Introduction**

In 2016, the rapper Kidd Wes (Emelike Nwosuacha) produced a music video titled “Made in America,” in which he explores African-American identity and its relationship with the 2016 political campaign between Hillary Clinton and Donald Trump. In 2018, Childish Gambino (Donald Glover) released a similar music video titled “This is America.” In addition to the analogous titles, aspects of Gambino’s performance are strikingly comparable to Wes’s performance thematically, lyrically, visually, melodically, and rhythmically. The aim of this report to detail the similarities between Kidd Wes’s “Made in America,” and Gambino’s “This is America.”<sup>1</sup>

## **Visual and Lyrical Themes**

Since MTV first launched into suburban homes in the 1980s, the music video transitioned from a “representation” of a live performance to another medium through which artists could express themselves. No longer were issues of gender, race, religion, sexuality, etc., confined to and negotiated in sonic material, lyrics, album art and other merchandise. These short films were now broadcast to millions of televisions in the United States. Artists like Madonna, The Eurythmics, and Twisted Sister negotiated gender scripts, while artists like Michael Jackson hired famous horror director John Landis to produce his thirteen minute long masterpiece “Thriller.” In other words, the music video became another type of “text” the artists implicitly (sometimes explicitly) encouraged (even demanded) the audience to interpret. Despite the fact that today MTV rarely shows music videos, the genre continues through online streaming platforms such as YouTube, Vevo, and Dailymotion.

In the case of Kidd Wes and Childish Gambino, the videos are integral to the meaning each artist intends to convey. Like most hip-hop lyrics, the meaning in the video is coded (based on metaphorical and literal associations) rather than a distinct narrative. This requires one to either base the visuals and words on their own experiences or be “in-the-know” (privity to the artist’s intentions). One can argue that the visual content of both of these artists’ videos have little to no distinct narrative, but are a series of images juxtaposed in a dadaesque fashion that, when played in real-time along with the lyrics and sonic material, require the listener to put the pieces of the “puzzle” together.

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<sup>1</sup> For the purposes of this report, the authors use the artists’ stage names rather than their legal names.

The lyrics of Gambino's song contain no story or plot line, nor do they give the audience any major clues as to the narrative of the song. However, the video is filled with various images referencing the history of racist behavior towards African-Americans. The artist makes visual references to the "Coon Face" from the infamous Coon Chicken Inn Menu (0:41) and Jim Crow pose (0:51) used in Blackface Minstrelsy. Furthermore, he references the murder of members of the Emmanuel AME church in Charleston by White Supremacist/Nationalist Dylan Roof in 2015 (1:50-1:57). Each of these is expressed ironically. Gambino poses as Jim Crow (See Figures 1 and 2), a witty trickster character, just before shooting a guitarist (playing kora-like arpeggiated patterns in a major mode – often associated with "happiness" or "positivity") in a chair with a handgun.<sup>2</sup> Just before this violent act, he dances shirtless with different expressions on his face. Sometimes he is smiling, while other times he has a scowl or pensive facial features. He makes the aforementioned "Coon Face" (See Figures 2 and 3) at this time. Further, the "Charleston choir" members are all smiling and singing "Oooh, got to tell somebody. Grandma told me 'Get your money, Black man'" just before Gambino guns them down. The gun is immediately placed in a red cloth (as was the original gun he used to kill the guitarist), which symbolizes caring for the gun more than the people that were just killed. This is of particular interest as it alludes to conservative support for the NRA, which is considered a corrupt organization by Black Lives Matter as well as many Progressive politicians and voters. In this case, the NRA and conservatism are White structures that oppress African-Americans and People of Color.<sup>3</sup> The fact that the cloth is red, the color of the GOP and Donald Trump's MAGA hats, reinforces the links to conservatism. These critiques are aimed at the structure of Whiteness (existing power structures mostly perpetuated by White men and women), which is rooted in America's racist past, one of which Black bodies have been derided and demonized while simultaneously serving as the main source of entertainment.<sup>4</sup>

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<sup>2</sup> The kora is a multi-string zither played by the Jali of the Mandinka and related cultures. The majority of slaves in the United States were brought from the Senegambia region of West Africa, where Mandinka culture is most prevalent. The Jali are known as oral historians and keepers of Mandika culture.

<sup>3</sup> In this report, the term People of Color refers to non-White minorities who do not consider themselves African-American, while Black refers to all non-White minorities, including African-Americans.

<sup>4</sup> In this article, Whiteness does not only refer to White men and women, but those who support racist structures that have traditionally benefitted White men and women and oppressed African-Americans and People of Color.



Figure 1. Thomas Daddy Rice in Blackface posing as Jim Crow.<sup>5</sup>

<sup>5</sup> Source: [https://en.wikipedia.org/wiki/Jim\\_Crow\\_\(character\)#/media/File:Thomas-D-Rice-1832.jpg](https://en.wikipedia.org/wiki/Jim_Crow_(character)#/media/File:Thomas-D-Rice-1832.jpg)



Figure 2. Childish Gambino in a Jim Crow Pose.<sup>6</sup>

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<sup>6</sup> All images of Childish Gambino are screenshots from his official music video on YouTube.





Figure 3. “Coon Face” from the original Coon Chicken Inn menu.<sup>7</sup>

<sup>7</sup> Source: [http://edan.si.edu/slideshow/viewer/?eadrefid=NMAH.AC.1153\\_ref272](http://edan.si.edu/slideshow/viewer/?eadrefid=NMAH.AC.1153_ref272)

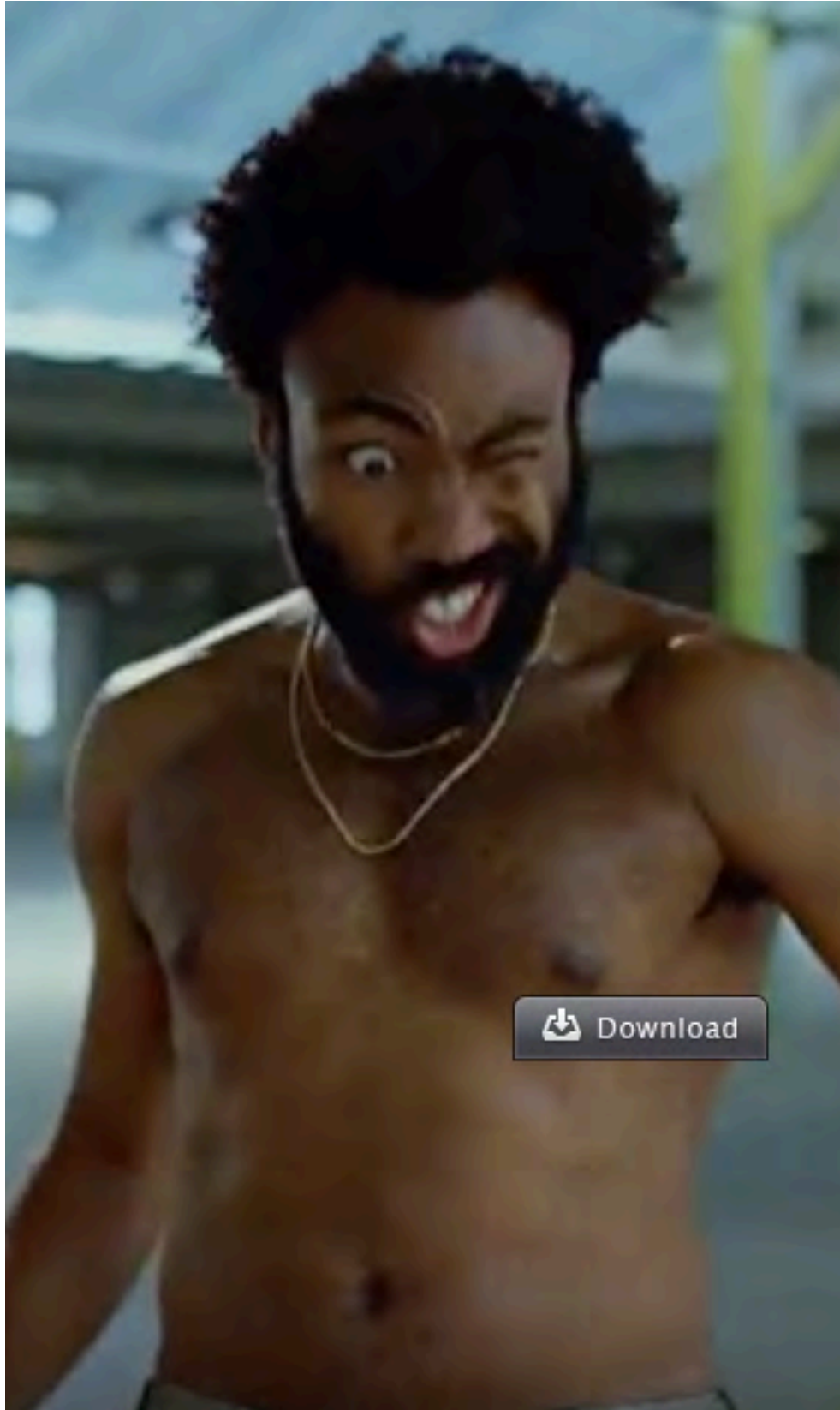


Figure 4. Childish Gambino making a “Coon Face.”

Similarly, Kidd Wes's video critiques Whiteness through mocking the choices of the 2016 election. Much of the imagery comprises people dressed in caricature costumes of Hillary Clinton and Donald Trump juxtaposed against clowns and gangster figures with guns. The lyrics consist of typical boasting/toasting by a rapper (one in which a rapper boasts about his accomplishments), but other than "Make America Great Again," in the last line of the song, there are no outstanding political references. It is the imagery that holds the narrative together, and, like Gambino's video, much of those lyrics and images are presented ironically.

The video begins with Kidd Wes staring incredulously at TV images of news Headlines about Clinton's emails, Trump mocking a disabled reporter, and James Comey pronouncing Clinton's innocence, which is followed by an image of a man in a clown suit (0:06-14). Next, a person in a Trump costume, after staring at a photo of himself with a likely underage girl (an allusion to Trump's pedophilic statement about his willingness to have sex with his daughter Ivanka if they weren't related), is kidnapped by gangsters because a security guard was distracted by a call on his cellular phone (1:30-36). A person in a Clinton costume is then seen looking at "Classified" emails on her Gmail account (a reference to her use of official email correspondence on a non-government server), and is subsequently kidnapped by the same group of gangsters (1:43-48). They place her in the same car as Donald Trump. At 2:01, a person in a clown mask is seen with a gun to their forehead. The political caricatures juxtaposed against clowns is a statement about the ridiculousness of politics, but those politicians also represent power, and, in particular, Whiteness.

As previously mentioned, the lyrics contain little political material, however, they are as ironic as the images. Wes raps in a boastful manner typical of rappers in hip-hop:

Black and white Benz, I'm making a chess move (Unh)  
I'm running the city, I'm making my next move (Whoa)

And got a tight grip and there won't be no evidence  
How funny I OJ'ed the game and it seems to make  
Oh what a relevance  
Pessimist niggas, you should just cherish this  
2016 Rappers?  
(yeah) you should beware of this

In these lines, Wes is jeering at stereotypical rappers and himself by referring to himself as OJ (an Uncle Tom figure) to describe his rise to the top (besting other rappers), while simultaneously warning them to take him (Wes) seriously. The images and the lyrics coincide here. The politicians are clowns, but they need to be taken seriously because they represent Whiteness and America's racist past. Wes concludes these thoughts with the lines "Heads up for the bullets that's coming from the Jakes. Making America great again, baby that's all it takes." The term "Jakes" is code for the police, whose harsh tactics have been lauded by Trump and his supporters. Much of Trump's popularity is related to his promise of tougher punishment for criminals. These tactics and Trump's political platform have been criticized by the Black Lives Matter movement

and those on the left side of the political spectrum. This is also the case for Hillary Clinton, who is known for her past support of harsh mandatory minimum sentences that disproportionately affected (and still affect) Black Americans.

Childish Gambino also alludes to oppression of African-Americans in the justice system through an image of a young Black man behind a bridge with “bars” holding a cellphone. This is accompanied by the ambiguous line “this a celly” (referring to both a cellphone and a jail cell – 2:29). Further, Gambino is running away from a White mob at the end of the video while the following ironic words are sung by Young Thug (3:34):

You just a black man in this world  
 You just a barcode, ayy  
 You just a black man in this world  
 Drivin' expensive foreigners, ayy  
 You just a big dawg, yeah  
 I kenneled him in the backyard  
 No proper life to a dog  
 For a big dog

The lyrics deride Black culture in the U.S., and even mention stereotypes such as premium cars with the line “Drivin’ expensive foreigners.” Like Kidd Wes’s performance, this is not a literal derision, but a satire about how White Americans deride Black culture. In his video, Kidd Wes also mentions his “Benz,” which is code for a Mercedes Benz, an expensive foreign car.

Another comparable image is the use of placing a bag over the head of a musician. In Gambino’s video, the bag appears over the guitarist’s head just before shooting him. In Wes’s video, the gangster authorities place a bag over a rapper’s head before they kidnap him (2:28). Each of these acts represents two themes: First, the silencing (representing Black power movements or revolutionary politicians who want rapid and drastic change) of those who do nothing to protest inequality and Whiteness. This is apparent in Gambino’s video when the guitarist is playing arpeggios in a major key (often associated with happiness) accompanying the plastic lyrics “We just want to party, party just for you.” In Wes’s video, the rapper, who is talking on the phone in coded language, represents one of the stereotypical rappers the artist (Wes) consistently toys with in his abovementioned boasting. Second, the criminal acts against the guitarist in Gambino’s video and the rapper in Wes’s video can be seen as an execution (representing Whiteness or existing political system prejudiced against African-Americans and People of Color) of those who have agency to unite and motivate larger groups of people against the establishment.

In sum, each of these rappers uses ironic images and lyrics to protest White hegemony in the United States. The term America here is a metaphor for both the history of oppressive racism towards Black bodies as well as the hope that African-Americans and other People of Color have the ability (freedom) to rise up against Whiteness in the U.S.



## Rhythmic and Melodic Themes

Rappers in hip-hop tend to focus on rhythm rather than specificity of pitch (e.g., being perfectly – or near perfectly – in-tune with a certain key or modality – such as opera or classical performance practice). This not to say that rappers pay no mind to a key or modality, they do. However, the pitches are usually “in the ballpark” rather than consistently singing/rapping specific pitches (i.e., A – 440 Hz). This focus on rhythm over specific melodic pitches is known as an MC’s (rapper’s) “flow.” According to scholar Adam Krims “The rhythmic style of MCing, or “flows,” are among the central aspects of rap production and reception, and any discussion of rap production that takes musical poets seriously demands a vocabulary of flow.... It thus cannot be separated from an exposition of rap genres and styles” (Krims 2000, 48). In the case of Kidd Wes and Childish Gambino, they both use what Ben Duiker calls *total triplet flow* (Duiker 2019). The author defines this as “complete formal units (such as verses) – or rarer, entire songs – where the MC uses nothing but triplets in their flow” (Ibid. 427). Figure 5 below demonstrates the similarities in flow to Wes’s “Made in America” (transposed up one whole-step to match the same starting pitch as Gambino) and Gambino’s line “This is America.” This is but one example of a plethora of times the artists employ *total triplet flow*.



Figure 5. *Total triplet flow* of Gambino’s “This is America” and Wes’s “Made in America.”

In addition to the use of *total triplet flow* by both artists in their respective phrases (and in subsequent phrases), the performance of these phrases by each rapper are nearly identical in timing despite a significant difference in tempo. Wes’s song is performed at 140 BPM (beats per minute) while Gambino’s song is at 120 BPM. The following figures visualize the similarities and differences in flow and tempo in waveform. Figure 6 is a waveform of each audio file (vocals only) of Wes’s and Gambino’s respective songs at their original tempo. Figure 7 is a waveform of each audio file with Kidd Wes’s song slowed down to 120 BPM, and Figure 8 is a zoomed in

waveform of the phrases “Made in America” and “This is America” by Wes and Gambino respectively in their original tempo.<sup>8</sup>

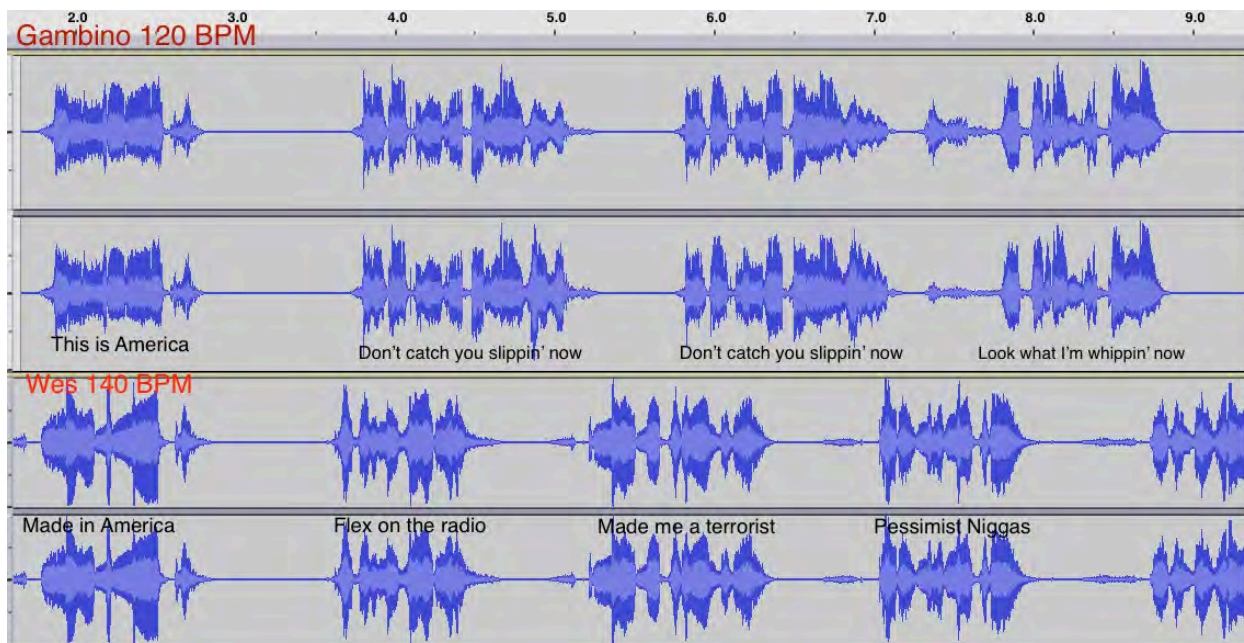


Figure 6. Waveform of Gambino’s verse on “This is America” and Wes’s “Made in America” in their original tempos.

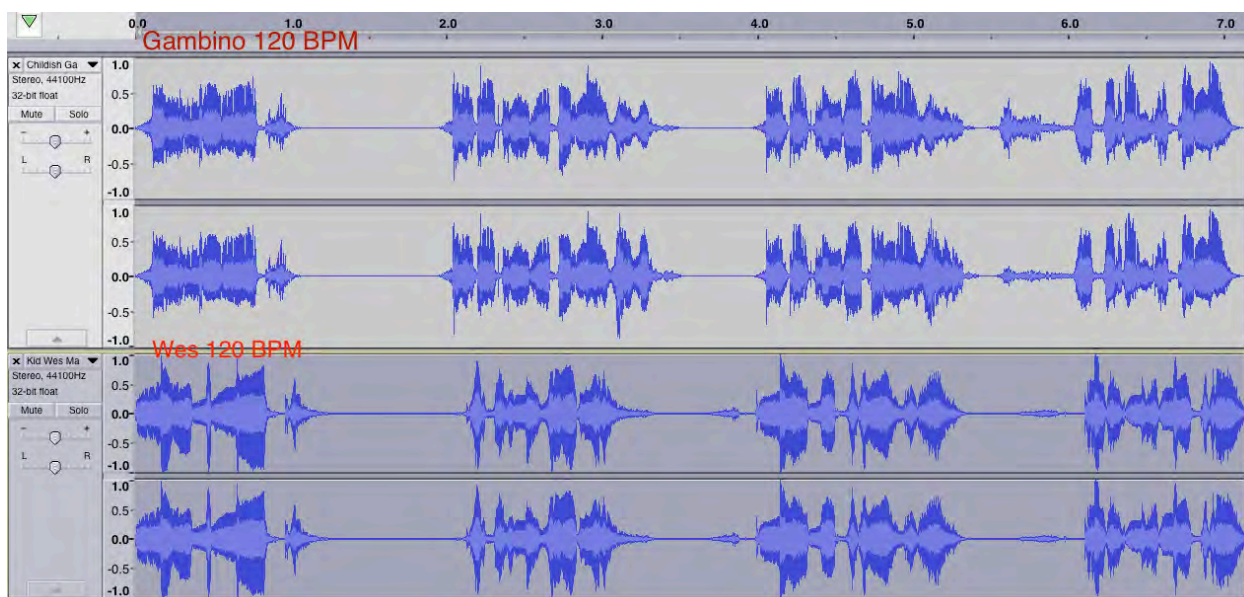


Figure 7. Waveform of Gambino’s verse on “This is America” and Wes’s “Made in America” in the same tempo.

<sup>8</sup> The authors obtained isolated vocals for “Made In America” from Emelike Nwosuacha and for “This is America” from this YouTube page uploaded by MS Project:  
<https://www.youtube.com/watch?v=ZZN1ZnPKrVQ&feature=youtu.be>.

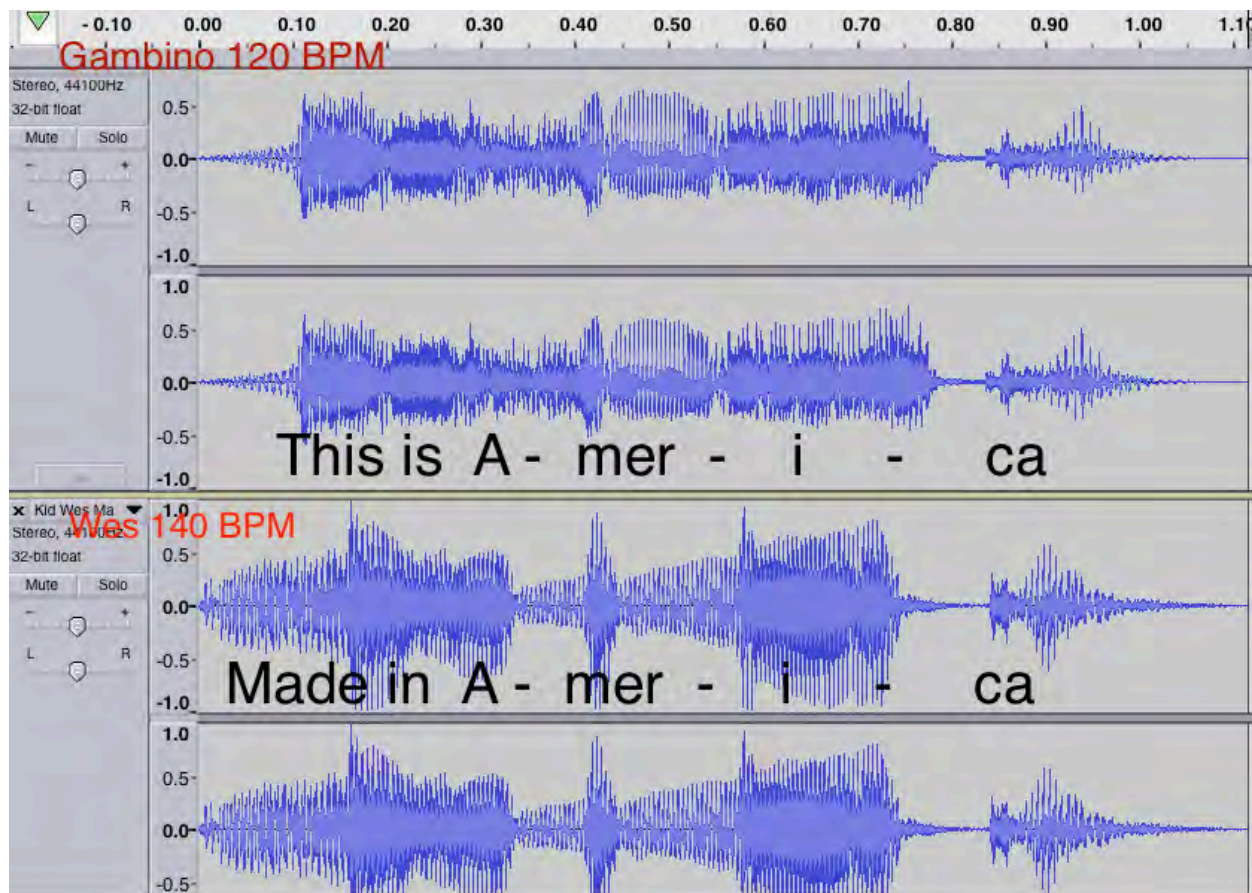


Figure 8. Zoomed in waveform of the phrases “Made in America” by Wes and “This is America” by Gambino.

Figure 6 demonstrates that while the two waveforms line-up in the beginning, Gambino’s the subsequent phrases “don’t catch you slippin’ now” and “look what I’m whippin’ up” come in much later than Wes’s phrases. Figure 7 demonstrates that by slowing down Wes’s vocals to 120 BPM, the subsequent phrases are much closer together. However, Figure 8 demonstrates that despite the significant difference in tempo, the flows of each rapper line up almost exactly; there is only a .004 second difference. This is not discernable to the human ear in real time. In sum, the flow of each rapper is nearly identical despite a 20 BPM difference in tempo.

Another rhythmic device that is part of each rappers flow is the use of rhythmic “utterances,” usually a “yeah,” “uh,” “ah,” or “whoa” after each line. Figure 9 and 10 demonstrate these rhythmic utterances in waveform. The main difference between the two is pitch. Wes’s is a lower pitch while Gambino’s is a higher pitch and possibly performed by another artist.



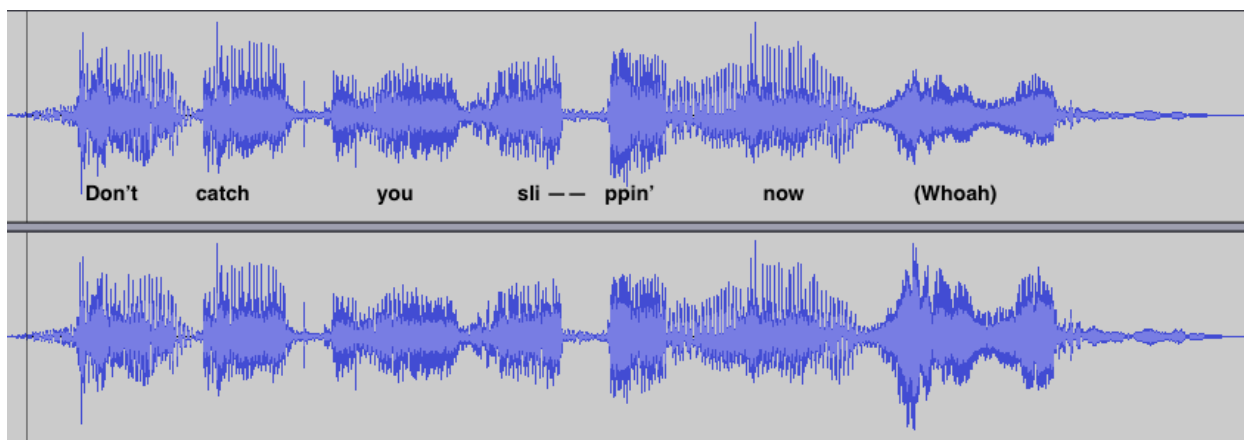


Figure 9. Gambino rhythmic utterance.

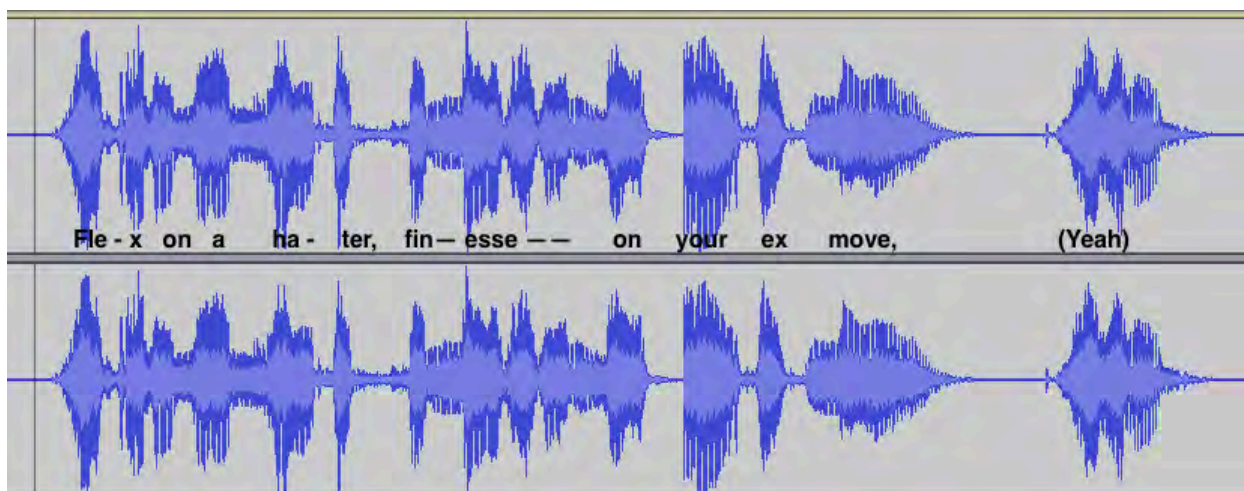


Figure 10. Wes's rhythmic utterance.

In terms of melody, neither rapper is perfectly in-tune, but their melodic contour is very similar. Childish Gambino's "tonal center" is ambiguous for his verse,<sup>9</sup> as the only specific pitches in the accompaniment are in the synthesized bass, which alternates between a D and Eb. Kidd Wes's backing track is distinctly in the key of Cm, one whole-step down from Gambino's. Relatively speaking, the starting pitches begin a perfect fifth above the tonal center (A for Gambino and G for Wes). For the purposes of this report, the authors have transposed Wes's track up one whole-step for a better visual comparison. Figures 11 and 12 are spectrographic images of the melodic contour for "This is America" by Gambino and "Made in America" generated by the SPEAR program, while Figures 13 and 14 are colored spectrographic 2D images.

<sup>9</sup> The term verse here is used loosely, as there is no distinct "chorus" in this song. It is more of a sectional form (A B C D) with the "verse" being the B section.

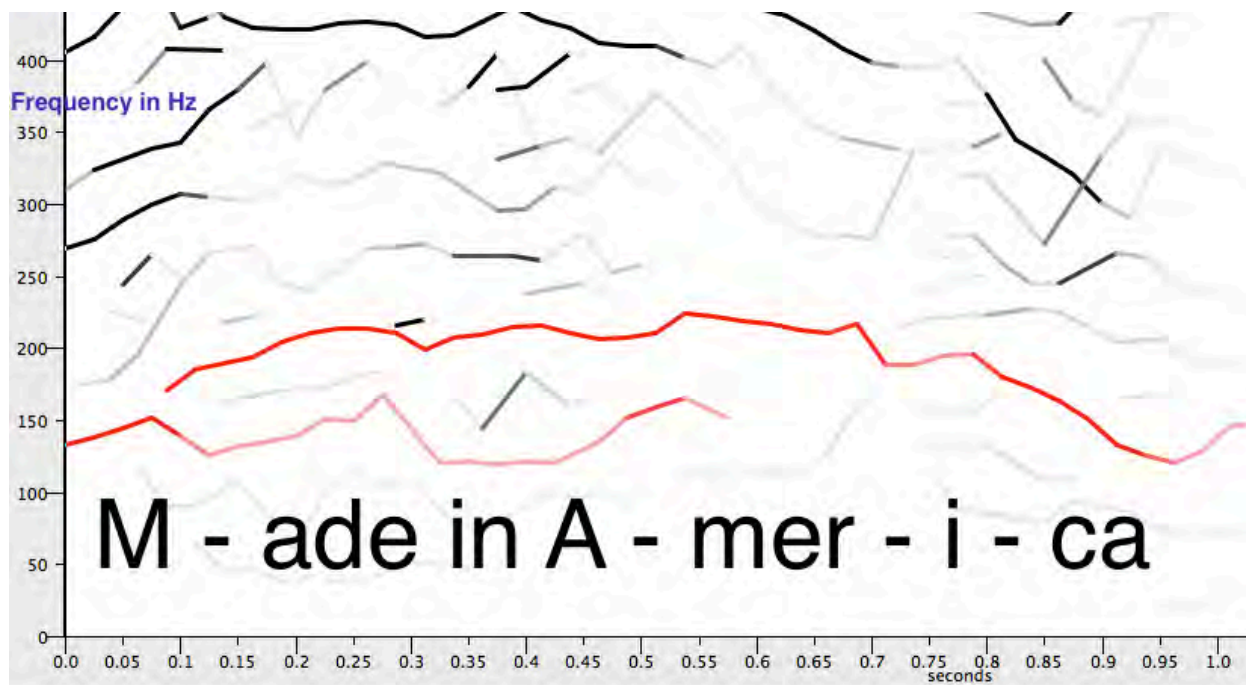


Figure 11. Melodic contour of "Made in America" by Kidd Wes.

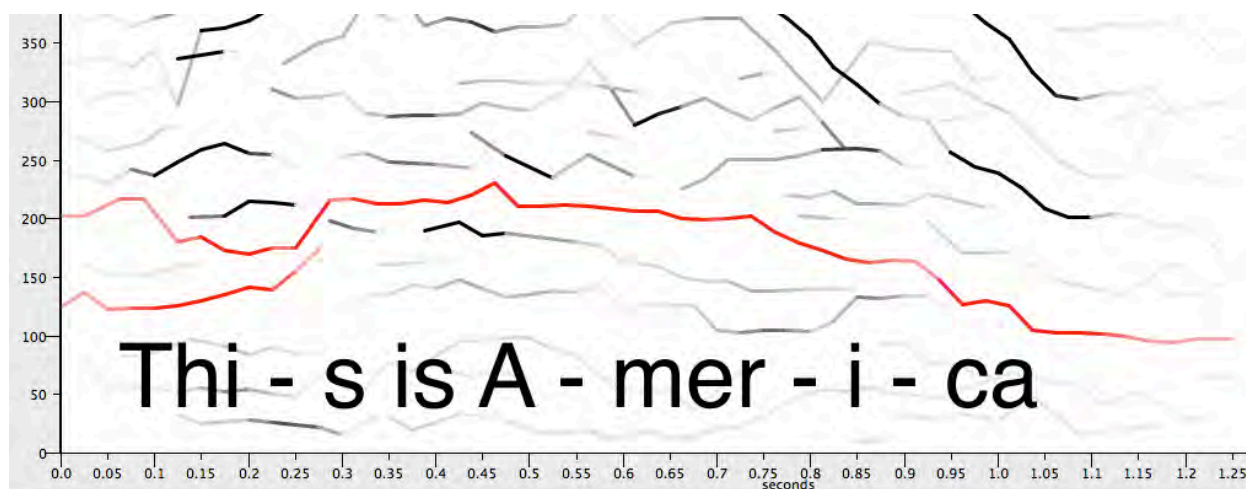


Figure 12. Melodic contour of "This is America" by Childish Gambino.

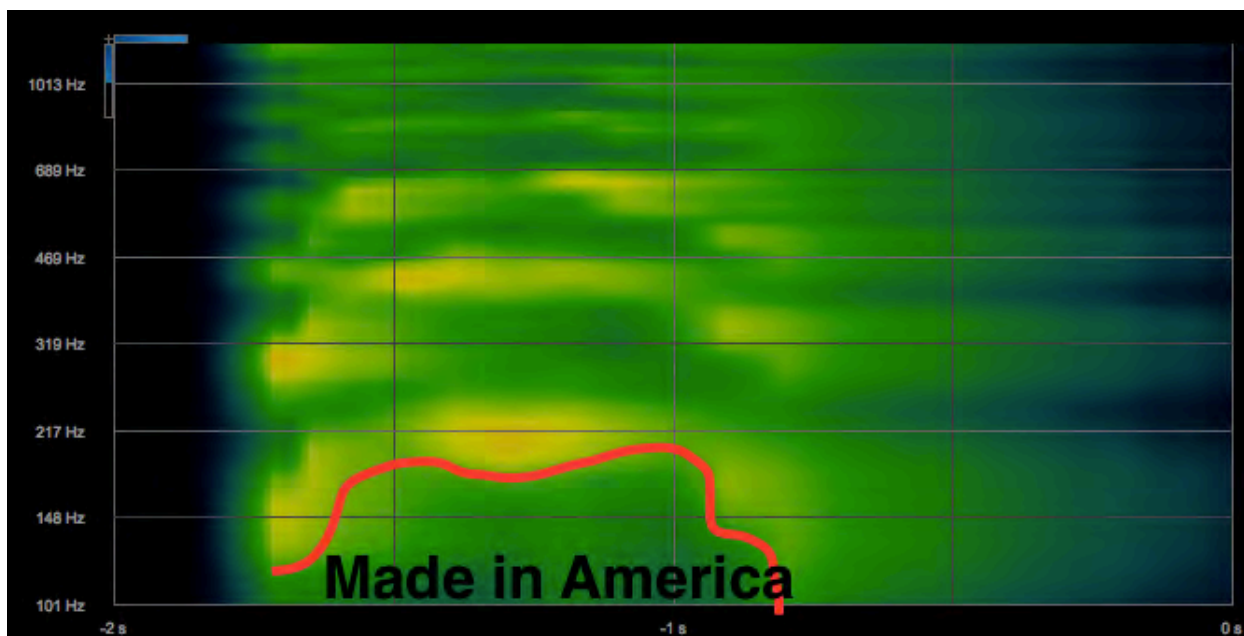


Figure 13. Colored spectrogram showing melodic contour of “Made in America” by Kidd Wes.

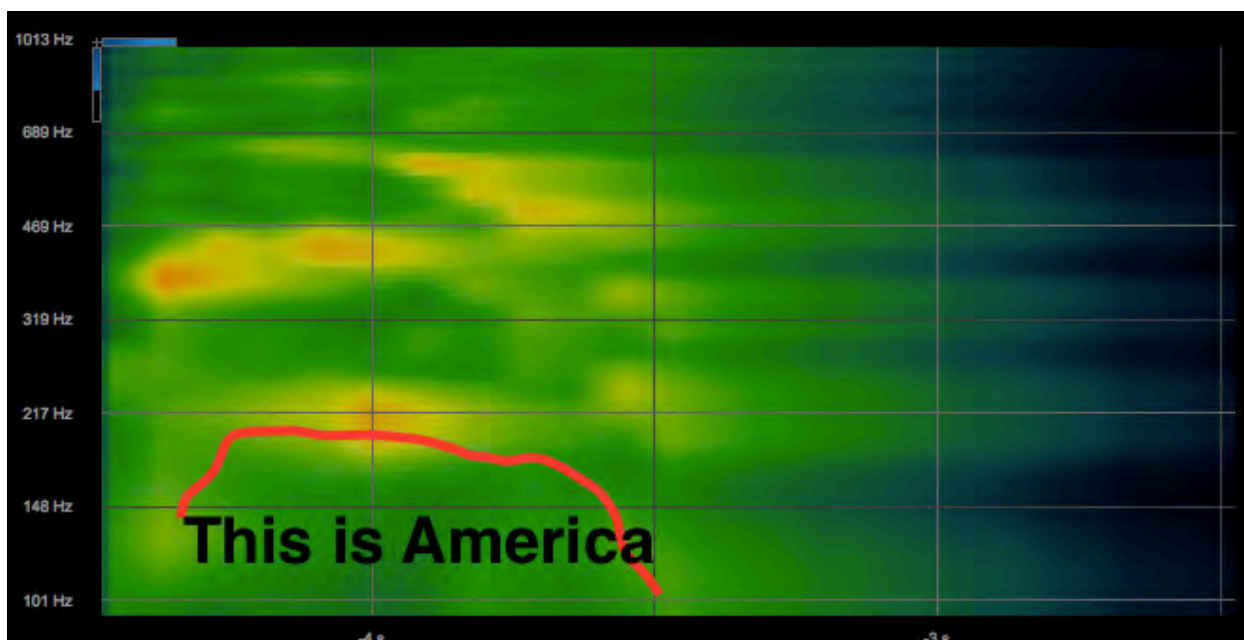


Figure 14. Colored spectrogram showing melodic contour of “This is America” by Childish Gambino.

In each of these spectrograms, the red line shows the general melodic contour for each respective song. In the colored spectrograms, the yellow and red points show the amplitude of each fundamental (outlined in red) and overtones. Because of the subtle timbral differences between Wes and Gambino, as well as the articulation of phonemes (“t” and “s” in “This is America” and “mm,” “ih,” and “nn” in Made in America), the density of the overtones fluctuates even if the fundamental frequencies are similar.

The spectrograms uncover several important details. First, each rapper is never perfectly “on-pitch.” For example, in Wes’s song, the first three notes on “A,” which in a typical Western scale should be 220 Hz, are preceded by a vocal scoop from the “m” of made (starting around 131 Hz) up to the first “A” (213 Hz – 7 Hz below an “on pitch” A). And even though I previously notated these first three notes as A in Figure 5, they vary in frequency from 203 to 221 Hz. Gambino’s performance is not much different. While he doesn’t have the long vocal scoop up to “This,” his first “A” is at 230 Hz, almost a Bb. And in contrast to the transcription in Figure 5, his descending line is far less marked. In other words, specificity of pitch is an inadequate measurement in terms of detailing the contour of the melody. What these spectrograms do demonstrate is that the contours of each melody have much more in common than they do differences.

## Conclusion

This report has detailed the thematic, lyrical, visual, rhythmic, and melodic similarities between the music videos “Made in America,” by Kidd Wes, and “This is America,” by Childish Gambino. The videos and lyrics share the themes of gun violence, and oppression of African-Americans and People of Color by police, the political establishment, conservative organizations (in particular the NRA and the GOP), White nationalism (Charleston shooting), and racist structures in the U.S. They also use of imagery related to Blackface Minstrelsy (Jim Crow, Coon, and Uncle Tom), and deride stereotypical Black culture in an ironic way to poke fun at and bring attention to the aforementioned racist power structures in the U.S or Whiteness. There are distinct similarities in melodic contour, rhythmic *triplet flow* in each performance, and the lines “Made in America” and “This is America” line-up nearly perfectly in time despite being different tempos. They also both use rhythmic utterances in their performances. It is authors’ opinion that these similarities are likely not coincidences.

## Works Cited

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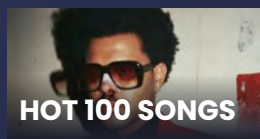
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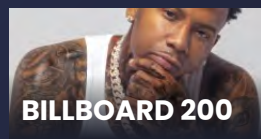
# EXHIBIT E



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HIP-HOP

# This Is Earth: Watch 12 Global Remixes of Childish Gambino's 'This Is America'

By Gil Kaufman

8/2/2018



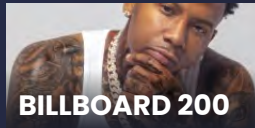
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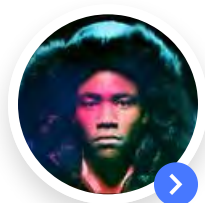
HOT 100 SONGS



BILLBOARD 200

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ARTIST MENTIONED



Childish Gambi...

From China to Iraq, Brazil and Nigeria, the world has given the tune its own spin.

When Donald Glover dropped the powerful "This Is America" video back in early May the surprise [Childish Gambino](#) track immediately [racked up way more YouTube views](#) than any of the rapper/actor's other videos. But in addition to making a stark, funky statement on the state of the nation, the unapologetically blunt images of gun violence and allusions to racial profiling also opened a Pandora's box of catharsis for budding rappers across the globe to use "America" as a template to dance through their own pain and strife.

On Wednesday's (Aug. 1) edition of PRI's [The World](#), some of the most striking remixed versions of the song and video from Iraq, Sierra Leone, Nigeria and France were profiled as a doorway into how Gambino's mixture of elegant beats and in-your-face imagery has inspired artists around the world. From "This Is Nigeria," which weaves some traditional instruments over lyrics about political and police corruption to the violence against women in "This Is South Africa" and the war-torn chaos of "This Is Iraq," each video and song uses the song as a template to speak on national issues.

Donald Glover Doesn't Want to Say What 'This Is America' Is About

like pointed parodies than political statements) speaks to the song's universal message, but the power of each remake is in the artist's inspiration to speak through the melody of Gambino's world-beat-infused track.

Check out 12 of the best "America" remixes below.

**This Is Sierra Leone**

**This Is Nigeria**

Childish Gambino's 'This is America' is YouTube's Biggest First Week Debut This Year

This Is Brazil

This Is Iraq

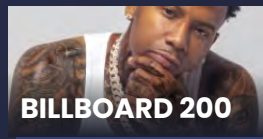
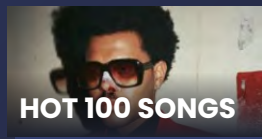
This Is Malaysia

This Is South Africa





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Childish Gambino's 'This Is America' Is A Stunning Statement on Brutality, Gun Control: Watch

This Is Afghanistan

This Is Uganda



This Is Ghana

This Is France



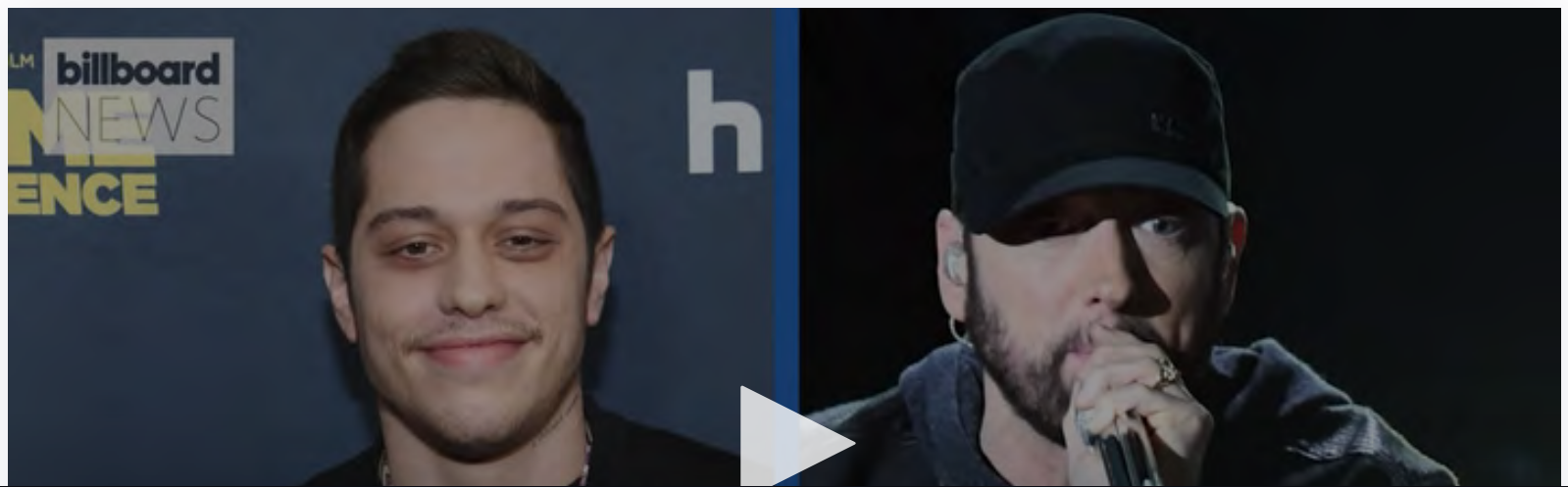


# This Is India

By **Gil Kaufman**  
8/2/2018

<https://www>

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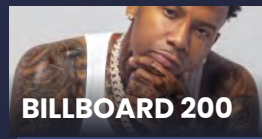




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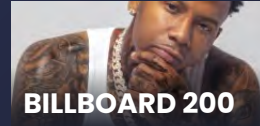


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**VIBE**

# EXHIBIT F



music

community

# This Is Iraq

by I-NZ



00:00 / 03:16

## Digital Track

Streaming + Download

**Free Download**

I-NZ - This Is Iraq (Remix to Childish Gambino - This Is America)

### Disclaimer

All rights to the musical composition belong to Childish Gambino and the record label GlassNote Records.

This video is a representation of Iraq's reality over the past 12 years and does not support, promote, nor condone violence in any shape or form.

### Credits

Written by I-NZ (@official\_inz)

Vocal Support by Alicia Renee and Warren Young

Follow I-NZ on his social media accounts below:

Instagram - [www.instagram.com/official\\_inz](https://www.instagram.com/official_inz)Facebook - [www.facebook.com/OfficialINZ](https://www.facebook.com/OfficialINZ)Twitter - [twitter.com/Official\\_INZ](https://twitter.com/Official_INZ)Soundcloud - [soundcloud.com/officialinz](https://soundcloud.com/officialinz)

Yeah, yeah, yeah, yeah, yeah  
Yeah, yeah, yeah, go, go away  
Yeah, yeah, yeah, yeah, yeah  
Yeah, yeah, yeah, go, go away  
Yeah, yeah, yeah, yeah, yeah  
Yeah, yeah, yeah, go, go away  
Yeah, yeah, yeah, yeah, yeah  
Yeah, yeah, yeah, go, go away  
Yeah, yeah, yeah, go, go away

This is not a party  
Party just for you  
We just wanna live  
Live for more than a few  
We're the only terror  
Label us the fame  
We just want the freedom  
Keep asking in vein  
This is not a party  
Party just for you  
We just wanna live  
Live for more than a few  
We're the only terror  
Label us the fame  
We just want the freedom  
Keep asking in vein

This is Iraq  
Look at us blowin' up  
Nobody showin' up  
Nobody ownin' up  
Hathal Iraq (woo) – This is Iraq (woo)

 [Share / Embed](#)

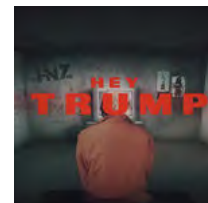
## I-NZ

Auckland, New Zealand

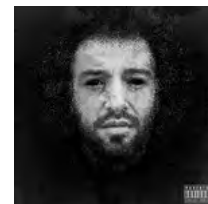
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I-NZ is a New Zealand rap MC. Born in Scotland to Iraqi parents, his cultural diversity shines throughout his... [more](#)

## discography

[I-NZ - Hey Trump \(Russ Remix\)](#)

Feb 2020

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Sep 2019

[Let Me Love](#)

Jan 2019

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# Childish Gambino Releases New Song And Video “This Is America”

CLICK [HERE](#) TO LISTEN AND  
WATCH THE VIDEO DIRECTED BY  
HIRO MURAI

[New York, NY – May 6, 2018]  
Today, Grammy, Golden Globe and  
Emmy Award winning recording  
artist, actor and producer **Childish  
Gambino** (né Donald Glover)  
releases a new song and video  
entitled “**This Is America.**” Click  
[here](#) to listen and watch the  
captivating video directed by Hiro  
Murai.



Earlier this week, **Childish**

**Gambino** announced new tour dates with **Vince Staples**, which will follow the first leg of his previously announced tour with **Rae Sremmurd**. Produced by Live Nation in partnership with Wolf + Rothstein, the tour will now visit 19 cities across North America, kicking off in Atlanta on September 6 and wrapping in Nashville, TN on October 12. See below for updated tour dates.

Gambino's successful live music production PHAROS, returns for its second installation this year in New Zealand on November 23, 24 and 25. More information and tickets are available now through the Pharos Earth mobile app <https://pharos.earth>.

Childish Gambino with special guests Rae Sremmurd and Vince Staples tour dates:

09-06 Atlanta, GA – Infinite Energy Arena \$

09-08 Chicago, IL – United Center \$

09-10 Toronto, Ontario – Air Canada Centre \$

09-12 Boston, MA – TD Garden \$

09-14 New York, NY – Madison Square Garden \$

09-15 New York, NY – Madison  
Square Garden \$

09-18 Philadelphia, PA – Wells  
Fargo Center \$

09-19 Washington, DC – Capital  
One Arena \$

09-22 Houston, TX – Toyota  
Center \$

09-23 Dallas, TX – American  
Airlines Center \$

09-26 Inglewood, CA – The Forum  
\$

09-27 Oakland, CA – Oracle Arena  
\$

09-29 Seattle, WA – Key Arena \$

09-30 Vancouver, British  
Columbia – Rogers Arena \$

10-02 San Jose, CA – SAP Center  
at San Jose ^

10-03 Inglewood, CA – The Forum  
^

10-05 Glendale, AZ – Gila River  
Arena ^

10-09 Denver, CO – Pepsi Center ^

10-12 Nashville, TN – Bridgestone  
Arena ^

**Stream/purchase “This Is America” –**

<http://smarturl.it/TcIgA>

***\*“This Is America” is not the first official single from Childish Gambino’s upcoming album on Wolf + Rothstein/RCA Records.***

**Keep up with Childish Gambino:**











<http://childishgambino.com>

<http://facebook.com/donaldglover>

<http://instagram.com/childishgambino>

<http://twitter.com/donaldglover>

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Donald Glover Presents "3.15.20"	Childish Gambino Receives 5 Grammy Nominations Including Record Of the Year, Song Of the Year And Best Music Video For "This Is America"	Childish Gambino Releases A Summer Pack Of New Music: "Summertime Magic" And "Feels Like Summer"	Childish Gambino's "This Is America" Certified Platinum By The RIAA	Childish Gambino Debuts At #1 On The Billboard Hot 100 Chart With "This Is America"

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For RCA Records Press Inquiries:  
[publicity@rcarecords.com](mailto:publicity@rcarecords.com)

# EXHIBIT H

LAW OFFICES OF

*Aidala, Bertuna & Kamins, P.C.*

ARTHUR L. AIDALA  
MARIANNE E. BERTUNA  
HON. BARRY KAMINS (RET.)  
JOHN S. ESPOSITO  
MICHAEL T. JACCARINO  
IMRAN H. ANSARI  
ANDREA M. ARRIGO  
DIANA FABI SAMSON

SENIOR COUNSEL  
LOUIS R. AIDALA  
JOSEPH P. BARATTA

546 FIFTH AVENUE  
NEW YORK, NY 10036  
TELEPHONE: (212) 486-0011  
FACSIMILE: (212) 750-8297  
WWW.AIDALALAW.COM

8118-13<sup>TH</sup> AVENUE  
BROOKLYN, NEW YORK 11228  
TEL: (718) 238-9898  
FAX: (718) 921-3292

OF COUNSEL  
JOSEPH A. BARATTA  
ANTOINETTE LANTERI  
WILLIAM R. SANTO  
PETER S. THOMAS  
LAWRENCE SPASOJEVICH

December 7, 2020

**Via Certified Mail**

Sony Music Entertainment  
c/o Business & Legal Affairs  
25 Madison Avenue  
New York, NY 10010

RCA Records  
25 Madison Avenue  
New York, NY 10010

Donald McKinley Glover, II  
c/o Ziffren Brittenham LLP  
1801 Century Park W.  
Los Angeles, CA 90067

Jefferey Lamar Williams  
c/o United Talent Agency  
9336 Civic Center Drive  
Beverly Hills, CA 90210

Ludwig Emil Tomas Göransson  
c/o Amos Newman  
William Morris Endeavor Entertainment  
9601 Wilshire Blvd, 8th Fl  
Beverly Hills, CA 90210

**Re: Infringement of Copyright Owned by Emelike Nwosuocha**

Dear Sir or Madam:

Please be advised that our firm represents Emelike Nwosuocha, a professional recording artist who performs under the stage name “Kidd Wes.” Mr. Nwosuocha has retained our firm to investigate and pursue a copyright infringement claim against you in regard to the unauthorized use of protected elements of Mr. Nwosuocha’s copyrighted sound recording entitled “Made in America” for the purposes of composing and recording the 2018 Childish Gambino song entitled “This is America.”

Child Gambino’s “This is America” contains certain distinct thematic, lyrical, rhythmic, and melodic central elements that are strikingly similar to those found in Mr. Nwosuocha’s “Made in America,” which was composed, recorded, widely publicly-distributed, and



copyrighted well-before “This is America.” The glaring similarities between unique shared central elements of the two songs - especially, but not only, unmistakable in the songs’ respective chorus sections - are blatant to a degree beyond coincidence; no listener comparing the two songs, whether layperson or musicologist, could reasonably conclude otherwise.

There is no question but that these materials are substantially similar to the copyright-protected work of Mr. Nwosuocha, and that you had access to Mr. Nwosuocha’s work, which has been continually available for public access on YouTube, among other major streaming platforms, since as early as November 9th, 2016. Furthermore, Mr. Nwosuocha has reserved all of its rights in its works under copyright and has not authorized you to reproduce, publish, provide, distribute, transmit, display, publicly perform, or otherwise make any use of such works. Therefore, your use of these works is a clear infringement of Mr. Nwosuocha’s copyrights in violation of Sections 106 and 501 of the federal Copyright Act.

As a result of your unauthorized use of Mr. Nwosuocha’s copyright, Mr. Nwosuocha has suffered significant damages. Because Mr. Nwosuocha’s copyrights were registered prior to your infringing activity, his damages also include those statutorily provided for under the Copyright Act.

Prior to commencing a court proceeding, we are herein affording you an opportunity to discuss a pre-suit resolution so that both parties may avoid the need for lengthy, and likely costly, litigation and public scrutiny.

Please contact our office to discuss further. Should we fail to hear from you or your legal representative within ten (10) business days of the date of this letter, we will assume that you are not interested in resolving this matter; we will proceed without further notice, and take all necessary measures to protect our client’s rights and interests under the law.

The above is not an exhaustive statement of all the relevant facts and law, and Mr. Nwosuocha expressly reserves all of his equitable and legal rights and remedies, including the right to seek injunctive relief and recover monetary damages.

Very Truly Yours,

/s/ Imran H. Ansari  
Imran H. Ansari, Esq.

# EXHIBIT I

*Aidala, Bertuna & Kamins, P.C.*

ARTHUR L. AIDALA  
MARIANNE E. BERTUNA  
HON. BARRY KAMINS (RET.)  
JOHN S. ESPOSITO  
MICHAEL T. JACCARINO  
IMRAN H. ANSARI  
ANDREA M. ARRIGO  
DIANA FABI SAMSON

SENIOR COUNSEL  
LOUIS R. AIDALA  
JOSEPH P. BARATTA

546 FIFTH AVENUE  
NEW YORK, NY 10036  
TELEPHONE: (212) 486-0011  
FACSIMILE: (212) 750-8297  
WWW.AIDALALAW.COM

8118-13<sup>TH</sup> AVENUE  
BROOKLYN, NEW YORK 11228  
TEL: (718) 238-9898  
FAX: (718) 921-3292

OF COUNSEL  
JOSEPH A. BARATTA  
ANTOINETTE LANTERI  
WILLIAM R. SANTO  
PETER S. THOMAS  
LAWRENCE SPASOJEVICH

February 16, 2021

**VIA EMAIL**

Jonathan D. Davis, P.C.  
Jonathan Davis, Esq.  
10 Rockefeller Plaza, Suite 1015  
New York, New York 10020  
jdd@jddavispc.com

**Re: Cease and Desist - Infringement of Copyright Owned by Emelike Nwosuocha**

Dear Mr. Davis:

I write as counsel for Emelike Nwosuocha, a professional recording artist who performs under the stage name “Kidd Wes,” in follow-up to a letter I sent you, dated December 7, 2020, to put you on notice of Mr. Nwosuocha’s retention of this firm to investigate and pursue a copyright infringement claim against you regarding the unauthorized use of protected elements of Mr. Nwosuocha’s copyrighted sound recording entitled “Made in America” for the purposes of composing and recording the 2018 Childish Gambino (Donald Glover) song entitled “This is America.” That previous letter’s stated purpose was to afford you an opportunity to discuss a pre-suit resolution in good-faith, enabling both parties to avoid the need for lengthy, and likely costly, litigation and public scrutiny. We look forward to discussing this with you, but we also would like to reiterate our client’s position prior to our discussion.

Mr. Nwosuocha herein demands that Donald Glover, et al, immediately cease the infringing activity with regard to his copyright, desist from such infringing activity in the future and comply with Mr. Nwosuocha’s other requirements set forth in this letter.

As stated in my previous letter, Mr. Nwosuocha composed, recorded, widely publicly-distributed, and copyrighted the infringed work, entitled “Made in America,” well-before the infringing work, “This is America,” was produced and/or publicly distributed. Mr. Nwosuocha has exclusive rights per US copyright in the infringed work, which has been widely distributed by Mr. Nwosuocha through YouTube, Apple Music, Spotify, Soundcloud, and Tidal, among other platforms, and is of substantial value to Mr. Nwosuocha. Mr. Nwosuocha has registered the copyright in the infringed work, “Made in America,” with the US Copyright Office.

Mr. Glover, et al, have published, distributed, transmitted, disseminated, and publicly performed materials that incorporate substantial portions of Mr. Nwowsuocha copyright work. Specifically, as you know, the infringing work, “This is America,” contains certain unique distinct thematic, lyrical, rhythmic, and melodic central elements that are strikingly and unmistakably similar to those found in Mr. Nwowsuocha’s “Made in America” to a degree clearly beyond coincidence. No listener comparing the two songs, whether layperson or musicologist, will reasonably conclude otherwise.

There is no question but that “This is America” is substantially similar to the copyright-protected works of Mr. Nwowsuocha, and that Mr. Glover, et al, had access to Mr. Nwowsuocha’s infringed work that has been publicly accessible on all major music streaming platforms since significantly prior to production and/or wide public dissemination of infringing work “This is America.” Furthermore, Mr. Nwowsuocha’s has reserved all of its rights in his infringed work under copyright and has not authorized anyone to copyright, to reproduce, publish, provide, distribute, transmit, display, publicly perform, or otherwise make any use of such infringed work. Therefore, the continued use of Mr. Nwowsuocha’s copyright work is a clear infringement of Mr. Nwowsuocha’s copyrights in violation of Sections 106 and 501 of the Copyright Act.

Moreover, the extent of practically-identical copying from elements of Mr. Nwowsuocha’s copyrighted work establishes that the infringement was knowing and intentional. Because Mr. Nwowsuocha’s copyright was registered prior to Mr. Glover’s infringing activity, he may be liable for significant statutory damages for each instance of infringement, in addition to attorneys’ fees and other costs incurred by Mr. Nwowsuocha to enforce his rights.

Mr. Nwowsuocha treats copyright infringement as a very serious matter and fully enforces his rights against those who infringe. However, Mr. Nwowsuocha is currently still prepared to try to resolve this matter amicably – provided, however, that Mr. Glover, et al, cooperate fully with Mr. Nwowsuocha and establish to his satisfaction that this was an error of judgment and not a systematic effort by you, as a significant player in the music industry, to attempt to profit from infringing upon the intellectual property of Mr. Nwowsuocha as an independent artist.

Giving the foregoing, we demand that Mr. Glover, et al:

1. Immediately cease and desist from all further production, reproduction, publishing, provision, distribution, transmission, display, performance, advertising, licensing, and sale of materials that infringe Mr. Nwowsuocha’s works;
2. Destroy all such materials in inventory or otherwise in its possession or control, including all copies in electronic or printed form; and
3. Provide Mr. Nwowsuocha with a full accounting of all copies sold, licensed, or otherwise distributed and all proceeds therefrom.

Mr. Glover, et al, are specifically advised that any failure or delay in complying with these demands will likely compound the damages for which they may be liable. The above is not an exhaustive statement of all the relevant facts and law, and Mr. Nwowsuocha expressly reserves all of its equitable and legal rights and remedies, including the right to seek injunctive relief and recover monetary damages.

Very Truly Yours,

/s/ Imran H. Ansari  
Imran H. Ansari, Esq.